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Fairness in Disciplinary Process: Misconduct and Disciplinary Enquiry

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ABSTRACT

The Indian Judiciary is known for its extremely elaborative Constitution, though which is drafter very well has many loopholes, when executed. The Judiciary system believes in the Principles of Natural Justice that ensure the rights of every individual, especially in Labour Law. Discipline is considered a backbone in ensuring a smooth functioning of the workplace that would yield high productivity. The Indian Labour Laws have laid down for a procedure to solve matters relating to the Misconduct of the employees which is known as the Disciplinary Process. Though a provision has been made for this, there are no set guidelines which opens the room for manipulation of the employees by the employers, falling under Unfair Labour Practices and Victimisation. A preliminary enquiry must be conducted to establish any kind of misconduct has been conducted at the first place. The Principle of Natural Justice would ensure the rights of the employee are not violated and that he is given a fair chance to be heard. Despite the loopholes, the disciplinary process has eliminated a lot of discipline related issues and also aims at maintaining the decorum of the workplace as well as the relations between the employer and employee as well as an employee and an employee.

Keywords: *Principles of Natural Justice, misconduct, discipline, loopholes, Labour Law, Unfair Labour practice, Disciplinary process, employers, employees.*

I. INTRODUCTION

Any act or omission of an employee, whether amounts to the misconduct or not, is to be governed in accordance with the provided list in the Industrial Establishments (Standing Order) Rules. Although there is no statute or law specifically lays down the procedure to conduct the disciplinary enquiry, the various judgements of the Industrial Tribunals, however, have laid down a basic idea of the procedure that ought to be followed while conducting such an enquiry. The prime principle behind conducting the disciplinary process is to ensure a smooth functioning between the employers and the employee at the workplace, also ensuring the Principles of Natural Justice.

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(A) Research Methodology:

Doctrinal is the methodology used to write this research paper. Information and data collected from secondary source has been carefully analysed while writing the paper. This includes publication research, journals, historical information of both past and present with respect to the topic of research. Doctrinal research is a theoretical study where mostly secondary sources of data are used to seek to answer one or two legal propositions or questions or doctrines and no field work has been done.

(B) Research objective:

I have conducted research on this aspect of Labour Law as discipline serves as the backbone in any industry or workplace for the smooth functioning that yields high productivity. I have highlight the need for having a set guidelines and procedure laid down in the Standing Order which would ensure that throughout the procedure of the enquiry, the principles of the natural justice would be ensured and assure the delivery of justice. I have also pointed out the loopholes in the Disciplinary process and listed out what amends are required in the process to ensure that the Principles of Natural Justice are not violated.

(C) Literature Review:**Books*****Textbook on Labour & Industrial Laws - Dr. H.K. Saharay, 2017***

This edition of the book on Labour and Industrial Law has been revised by addition, alteration and deletion of some matters in the earlier edition with the object of enhancing its utility, importance and practicability. All the major Acts of industrial jurisprudence have been retained with up to date amendments and current case laws of the Supreme Court and High courts of India in addition to foreign decisions in support of propositions of law laid down by the Indian Courts. A galaxy of illustrative cases has been included in this book to solve different complicated problems faced by all concerned in this field of jurisprudence. A burning issue on sexual harassment of women at workplace is being faced by employers for the last few decades. The Judiciary as well as Legislature are anxious to prevent them and both the organs of the Government have attempted to prevent it by all means. This edition contains judicial announcements and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with relevant commentaries thereon for the benefit of the readers.

Introduction to Labour and Industrial Laws - Dr. Avtar Singh & Dr. Harpreet Kaur,

2017

Introduction to Labour and Industrial Laws 4e, is specially designed as a study aid for law students with a clear objective of assisting students in their examination preparation. The book will also fulfil the requirement of students pursuing the LL.M. course from various universities of the country including National Law Schools and for students pursuing MBA (HR). The text covers all the major industrial and labour laws such as the Industrial Disputes Act, 1947, The Factories Act, 1948, The Minimum Wages Act, 1948, The Payment of Wages Act, 1936, The Payment of Gratuity Act, 1972, The Payment of Bonus Act, 1965, The Trade Unions Act, 1926, The Employees Compensation Act, 1923, The Employees State Insurance Act, 1948, The Employees Provident Funds and Miscellaneous Provisions Act, 1952, The Fatal Accidents Act, 1855, The Industrial Employment (Standing Orders) Act, 1956, The Maternity Benefit Act, 1961, The Apprentices Act, 1961, The Equal Remuneration Act, 1961, The Child Labour (Prohibition and Regulation) Act, 1986 and The Contract Labour (Regulation and Abolition) Act, 1970. Key Features are that it discusses the concepts of Labour and Industrial Laws in a very systematic manner using simple and lucid language. Laws are divided into separate chapters covering all aspects and making it easier to comprehend New to the edition:-Covers all the important amendments in labour laws till 2016Covers the latest Supreme Court judgment includes the overview of other labour laws such as The Industries (Development And Regulation) Act, 1951, The Mines Act, 1952, The Collection of Statistics Act, 2008 and The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

Labour and Industrial Laws - P. K. Padhi, 2017

This comprehensive and well-organised text, now in its Third Edition, explains, with great clarity and precision, the labour and industrial laws such as the Industrial Disputes Act, the Factories Act, and the Contract Labour Act. While giving a broad perspective of the subject, the text brings out the objectives behind the enactment of every legislation, discusses the relevant case laws and shows how the Constitution is related to labour laws.

Key to Practice & Procedures in Industrial Disputes - Narender Kumar, 2018

Key to Practice and Procedures in Industrial Disputes provides in-depth analysis of Industrial Law in a lucid and simplistic manner. The book dwells into the nature of procedural law and various legal provisions related to industrial law. It examines the different stages of filing a suit under industrial dispute and goes on to discuss the rights

and remedies available to workers in case of any conflict with the employer. It elucidates the balance between legal rights of the workmen and legal duties of the employer. This edition presents latest judicial pronouncements and their applicability in the field which is a distinctive feature of the book. It enumerates the special provisions to inform and elaborate on the subject to all concerned about the practice and procedural law, as available under the Industrial Disputes Act. This book is an essential guide for legal practitioners, industrial tribunals, trade unions and every person who finds difficulty in comprehending various legal provisions drafted in an entangled language.

Practical Guide to the INDUSTRIAL DISPUTES Act and Rules - H.L. Kumar, 2016

The Industrial Relations between Employer and Labour Unions are getting complicated. The Industrial Law as available today, depends upon the various Acts, like Industrial Disputes Act, 1947, enacted by the Government and the interpretations of the Provisions of the Act given as rulings and judgments by the various High Courts and Supreme Court. The Principles of Natural Justice have helped to from certain guidance to conduct domestic enquires and any punishment to the workmen has to be preceded by fair and proper domestic enquiry. With this view, the chronology of the cases available on different issues are given.

Articles:

Naba Khan, 2018² – This article discusses how to conduct Disciplinary Enquiry and what are the administrative rules to be followed under the Industrial Establishment (Standing Orders) Act and Rules, 1946.

Rohan Jusiwala, 2010 - The article focuses on the requirements of holding a domestic enquiry with respect to indiscipline on part of a workman, the procedure to be followed thereunder and the impact of section 11-A of the Industrial Disputes Act, 1947 (“the Act”) on domestic enquiries.

Shreya Tripathi, 2019³ - The author has discussed the Principles of Natural Justice and its 3 major rules which are hearing rule, bias rule and reasoned decision. The article also covers ‘*Jus Natural*’ of the Roman law which is closely related to Common law and moral principles but is not codified. It is a law of nature which is not derived from any statute or constitution.

² Naba Khan, *How to conduct disciplinary inquiry under the Industrial Establishment (Standing Orders) Act and Rules, 1946*, IPLEADERS (Jan. 10, 2021, 10:04 AM), <https://blog.ipleaders.in/disciplinary-inquiry/>

³ Shreya Tripathi, *Principles of Natural Justice*, IPLEADERS (Jan. 10, 2021, 10:05 AM), <https://blog.ipleaders.in/natural-justice/>

II. FAIRNESS IN DISCIPLINARY PROCESS

(A) Concept of Misconduct:

An organization is a living social organization wherein employers and employees work to satisfy their economic, sociological and psychological needs, which essentially balances objectives. No organization can properly function unless limits are set to individual behaviour which may jeopardize the interests of the organized establishment. This function is generally described as maintenance of discipline. Discipline indeed is the very basis of a well-organized and established enterprise and forms the backbone of the industrial management. Without a strict disciplinary rules that must be known to all the working staff in an organisation, it is difficult for a smooth functioning of the organisation or the industry.⁴ With the establishment of relationship of employer and employees, certain code of conduct for mutual relationship develops. Discipline connotes observance of the prescribed rules of conduct or mode of life and implies willingness to work and conforming to the established rules. Obedience to lawful orders is contemplated under the contract of service. Discipline is a behavioural question concerning human resources and thus, disciplinary action is one of the major causes of industrial dispute. Every employee has strong security needs as well as a need to identify with a group of like-minded people. The employers have always regarded the right of disciplinary action as concomitant to the efficient attainment of the objectives of industrial activity. On the other hand, the workers and their unions regard protection from non-arbitrary or unjustified disciplinary action as one of the most important functions of trade union activity. The root cause of disciplinary action is a misconduct. 'Misconduct' has not been defined either in the Industrial Disputes Act, 1947 or in Industrial Employment (Standing Orders) Act, 1946 under which most of the standing orders governing conditions of service are framed. Misconduct can be broadly grouped in three categories:

- Misconduct relating to work

This is with respect to the non-performance or negligence of duty. Absence without leave or overstaying sanctioned leave without permission, absence from the place of work in an unauthorised way, disregard of safety equipment and procedure, guidelines.

- Misconduct relating to discipline

This type of misconduct is in regard with the sub-ordination or disobedience whether alone or in combination with others. Disobedience of the lawful orders of the superior, striking work or inciting others to strike work; go slow, gherao, etc.

⁴ Section 2, Industrial Disputes Act, (September 10, 2020, 4:12 PM) <https://indiankanoon.org/doc/1418464/>

- Misconduct relating to integrity

Such misconduct is in relation to theft, fraud or dishonesty, giving false information misappropriation of employer's money, etc. Under clause I 4(3) of the Industrial Employment (Standing orders) Central Rules, 1946, the following acts and omissions shall be treated as misconduct:

- Intentional insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- Theft, fraud or dishonesty in connection with the employer's business or property.
- Intentional damage to or loss of employer's goods or property.
- Taking or giving bribes or any illegal gratification.
- Habitual absence without leave or, absence without leave for more than 10 days.
- Habitual late attendance.
- Habitual breach of any law applicable to the establishment
- Disorderly behaviour during working hours at the establishment or any act subversive of discipline.
- Habitual negligence or neglect of work.
- Frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of wages in a month.
- Striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law.

The Supreme Court has held that "the word 'Misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude. It must be improper or wrong behaviour, unlawful behaviour or transgression of definite rule of action or code of conduct, established and but not mere error of judgements, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality of character."

III. BASIC PRINCIPLES FOR DOMESTIC ENQUIRY

(A) The Principle of Natural Justice in Domestic enquiry:

A domestic enquiry is a quasi-judicial proceeding and an essential requirement laid to carry

out a domestic enquiry is that the Principle of Natural Justice must be followed. The Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 lay down several rules of Natural Justice but these two Acts are not strictly applicable to Domestic Enquiry. The Rules of Natural Justice are a basis of the principles of Justice which are founded on Equity and reason and without which no Justice can be done. It is not possible to make a complete list exhausting all the rules of Natural Justice in brief It can be said that the Rules of Natural Justice are those rules which it is absolutely essential to Natural Justice.⁵ Rules of Natural Justice is a matter of substance and not of form. It includes two basic principles of Equity:

- Nemo judex in propria causa sua: No one shall be a judge in his own case and he must not have any personal interest in the case,
- Audi alterem partem: No decision can be given against a party without a reasonable hearing from both the parties.

The management of the industrial establishments at all times must satisfy the principles of natural justice and be in accordance with this principle to maintain a neutral attitude towards the workmen and the employees at a workplace. The delinquent employee must be informed about the charges levelled against him and shall be provided with an opportunity to be heard so he can refute them and establish his innocence, as these are his rights which cannot be denied by the employer or the organisation. He must be given an occasion to cross-examine the witnesses in his defence and evidence at the enquiry should be adduced in his presence. If proven guilty, the punishment awarded, should be in proportion to the misconduct committed. These principles of natural justice are specified in Sections 2(b), 5(2), 10A (2) and 13A of The Industrial Employment (Standing Orders) Act, 1946.⁶

In **Union of India V. TR Verma**, (1957 AIR 882), the Supreme Court had laid down that the principles of natural justice mandate that the charge sheeted employee should be given an opportunity of providing the relevant evidence which should be taken in his presence; he should be given the opportunity of cross-examining the witnesses examined on behalf of the management, and that no materials should be relied upon against him without giving him an opportunity to explain to them.⁷

⁵ Principles of Natural Justice, SCC Online, (September 14, 2020, 3:52 PM) <https://www.scconline.com/blog/post/tag/principles-of-natural-justice/>

⁶ Industrial Employment (Standing Orders) Act, 1946, Labour Law, (September 24, 2020, 3:52 PM) [https://labour.gov.in/sites/default/files/INDUSTRIALEMPLOYMENT\(STANDINGORDERS\)1CENTRALRULES1946.pdf](https://labour.gov.in/sites/default/files/INDUSTRIALEMPLOYMENT(STANDINGORDERS)1CENTRALRULES1946.pdf)

⁷ Union of India V. TR Verma, Indian Kanoon, (September 14, 2020, 6:21 PM) <https://indiankanoon.org/doc/1478450/>

Right to Make Representation:

A delinquent workman has a right to represent against the findings recorded in the enquiry report to the disciplinary authority. The right has been laid down in the case of Union of India V. Mohd. Ramzan Khan, (1991 AIR 471). The Supreme Court in **Union of India V. Mohd. Ramzan Khan** case, held that "the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right. It is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, Public or Private".⁸

The principle of natural justice lays down that no man can be punished or condemned without giving an opportunity to justify himself. To ensure this principle is strictly followed and the rights of the aggrieved are ensured, the Industrial Tribunals have laid down the following procedure -

(B) Preliminary Enquiry:

Such an investigation is carried out to find out whether there is any prima facie case of any sort of misconduct on the part of the workmen. The preliminary enquiry is considered an integral part in the disciplinary process as it tells us if at all there is any case to be proceeded with. Preliminary enquiry is made solely with a view to decide whether there is adequate material for initiating a Domestic Enquiry against a workman and is merely for the purpose of framing a charge. It is conducted for the satisfaction of the employer and it is only when the employer decides to hold a regular Domestic Enquiry for the purpose of inflicting punishment that the employee gets an opportunity of being heard and defends himself. It is not necessary that the workman should be present while the preliminary enquiry is being conducted. The complaint may be initiated by one workman against another workman or on a complaint by the supervision under whom the workman is working.

The necessity to conduct a preliminary enquiry depends on the nature and the severity of the offence. The Statements recorded during the preliminary enquiry have nothing to do with the regular enquiry unless they are produced by the Management in the course of the enquiry proceedings. After this is done, if the statement given by any witnesses during the preliminary enquiry differs from that of the final enquiry, the enquiry officer may draw the

⁸ Union of India V. Mohd. Ramzan Khan, SCC Online, (September 19, 2020, 9:52 PM) <https://www.sconline.com/Members/SearchResult.aspx>

attention of the witness to the same and seek clarification on those points and confirm the same.

In a landmark judgment of *Amulya Ratan Mukharjee Vs. Eastern Railway, (1962)*, it observed by the Honourable High Court of Calcutta that:⁹

Before making a charge, the Authorities must conduct a preliminary investigation or a Fact-Finding enquiry when they receive a complaint from an employer. This is an informal enquiry and thus no rules are observed. There can be ex-parte examination or investigation and ex-parte report. All this is to enable the authority to acquaint themselves of the real facts of the case and to see whether prima facie, any misconduct has been constituted, and to also decide whether the employee should be charge-sheeted.

(C) Essentials of a fair enquiry:

There are three principles governing the process for conducting a domestic enquiry. They are:

- The service rules or the standing orders
- The method followed by courts of law
- The principles of natural justice

An enquiry cannot be initiated unless

- (i) The employee against whom charges are levelled must have clear information and idea as to what accusations are alleged on 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 examine witnesses including himself in his defence if he so wishes on any relevant matter and
- (iv) The enquiry officer records his findings with reason for the same in his report.

(D) Charge and charge sheet:

A domestic enquiry begins when a charge sheet is issued to the workman. The charge sheet bears all the details of the misconduct such as the misconduct committed, the date and time of its commission and the relevant section of the Standing orders under which the misconduct falls.

The charge sheet must clearly set forth the charge and ask the delinquent to submit his

⁹ Amulya Ratan V. Eastern Railway, Case Mine, (September 21, 2020, 8:52 PM) <https://www.casemine.com/judgement/in/56095ebbe4b01497112c88a4>

explanation within a reasonable time, i.e. within 24 or 48 hours depending on the gravity of the misconduct. The employer is at liberty to take disciplinary action for the sake of discipline and proper order in his organization, but the question has to be dealt in a reasonable manner and in accordance with common sense, if the kind of misconduct committed has not been mentioned in the Standing Order.

Ingredients of a charge sheet:

- Name of the person charged
- Employee number
- Address
- Date, Time & Place of Occurrence
- Narration of the misconduct alleged
- Relevant clause and specific act of misconduct under the standing orders/settlement.
- Calling for an explanation within a stipulated time
- If the charge rests on a written report, a copy of that report to be enclosed

Show Cause Notice:

After deciding the punishment for the misconduct proved against the employee the Disciplinary Authority should issue a show cause notice furnishing his order and proposing the punishment and advising the employee to show cause why such a punishment should not be awarded to him.

In *Sur Enamel and Stamping Works (P) Ltd. vs. Their Workmen, (1963 SC 1914)*, the Honourable Supreme Court, has laid down the procedure for conducting an enquiry for industrial adjudication, provided that an enquiry cannot be said to have been properly held unless:

- the workman proceeded against must be informed clearly of the charges levelled against him,
- the witnesses must be examined in the presence of the workman,
- the workman must be given a fair opportunity to cross-examine the witnesses including himself if he so wishes,

- the Enquiry Officer must record his findings with reasons in his report.¹⁰

Generally, Standing Orders provide the manner of serving the charge sheet on the workman concerned and where it is prescribed the procedure should invariably be followed. It can be given personally or by post to the delinquent worker.

On receipt of the charge sheet, the employee sends his reply to the Authority and if the Authority finds the reply to be unsatisfactory, he may get a show cause notice from the Authority. This procedure is applied in the case of *Associated Cement Co. Ltd vs. Their workmen and Other, (1964)* in which the Supreme Court held that the workman should be given due intimation of the date on which the enquiry is to be held so that he has an opportunity to prepare his defence at the enquiry.¹¹

Service of the charge sheet:

The Standing Orders provide for the manner of serving the charge sheet on the delinquent workman concerned and the procedure should invariably be followed.¹² Generally, the charge sheet framed against an employee should be served on him personally, and an acknowledgement to that effect should always be obtained from him. In cases where the employee is absent or refuses to accept the charge sheet when presented to him, the same should be sent to his local and permanent address under registered post with acknowledgement due, after getting his refusal attested by two witnesses. In case the charge sheet is returned by the postal authorities, the employer should display the charge sheet on the notice board, if such a provision exists in the service rules. In such case it is necessary to publish it in a local newspaper in the regional language with a wide circulation. It is not enough to display the charge sheet only on the notice board of the company.

Representation of the charge sheeted employee:

The enquiry may proceed ex-parte if the employee refuses to take part in the enquiry after presenting himself or when he does not report for the enquiry in spite of a notice being served on him.

A charge-sheeted employee may be represented by Co-worker or the union/association executives and any request by the delinquent employee seeking for assistance of a lawyer for representing his case, should be decided by the enquiry officer and not by the management.

¹⁰ Sur Emanuel V. Their workmen, SCC Online, (September 30, 2020, 7:13 PM) <https://www.scconline.com/Members/SearchResult.aspx>

¹¹ Associated Cementman V. Their workmen, Indian Kanoon, (September 24, 2020, 3:52 PM) <https://indiankanoon.org/doc/1150647/>

¹² Charge sheet, HR Help board, (October 4, 2020, 1:34 PM) <https://www.hrhelpboard.com/contract-letters/charge-sheet.htm>

Various courts have held that if the enquiry officer or the presenting officer is either a practising lawyer or legally trained person, a full opportunity should be given to the delinquent employee to represent his case through the lawyer.

In **Board of Trustees of the Part of Bombay V. Dilip Kumar Ragha Vendranath**, the Supreme Court observed that the matter would be in the discretion of the Enquiry office whether looking to the nature of the charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.¹³

In my view, we need to promote and ensure the fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is against a legally trained person, if he seeks permission to appear through a legal practitioner, refusal to grant his request would amount to denial of a reasonable request to defend himself and the essential principles of Natural Justice would be violated.

(E) Appointment of Enquiry Officer:

In the famous case of **Saran Motors Pvt. Ltd. V. Vishwanathan** 1964, it was held that an Enquiry Officer should be properly and duly authorised by the competent authority to hold a domestic enquiry into the charges alleged against any aggrieved employee.¹⁴ Any person, who for that matter could even be an outsider, may be appointed as an enquiry officer, provided rules or Standing Orders do not bar such an appointment. The Enquiry Officer has the obligation to explain the procedures of enquiry and charge sheet against the concerned workman.

Suspension Pending Enquiry:

In circumstances where a workman is placed under suspension by the employer due to a pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance in accordance with the provisions of Section 10 (A) of the Industrial Employment (Standing Order) Act, 1946 which provides:

“Where any workman is suspended by the employer pending inquiry into complaints or charges or misconduct against him, the employer shall pay to such workman subsistence allowance:

¹³ Board of Trustees V. Dilip Kumar, SCC Online, (October 1, 2020, 1:34 PM) <https://www.sconline.com/Members/SearchResult.aspx>

¹⁴ Saran Motors V. Vishwanathan, Lawyer Services, (October 4, 2020, 9:54 PM) <https://www.lawyerveices.in/Saran-Motors-Private-Limited-New-Delhi-Versus-Vishwanath-and-Another-1964-03-31>

- *at the rate of 50% of the wages which workman was entitled to immediately preceding the date of such suspension, for the first 90 days of suspension and*
- *at the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.*¹⁵

Depending on the gravity of charges, an employee may be suspended along with serving him the charge sheet. The various circumstances which may warrant suspension of an individual are:

- When any disciplinary proceeding is pending or contemplated.
- When the workmen is engaged in the activities prejudicial to the interest or security of the state.
- Where a case in respect of any criminal offence is under investigation, inquiry or trial.
- Where continuance in office will prejudice investigation/ inquiry/trial.
- When the presence of the employee in office is likely to affect discipline.
- When his continuous presence in office is against the wider public interest.
- Where a prima face case has been established as a result of criminal or departmental proceedings leading to the conviction, revival, dismissal, etc.

According to the Industrial Employment (Standing Orders) Act, 1946, 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 the delay in the completion of disciplinary proceedings is not due to the worker's own conduct.

(F) Consideration of explanation by employee:

After a charge sheet has been served on the accused workman, he may send his explanation in either of the following ways:

- (i) Admitting the charges and pleading for mercy.
- (ii) Denying the charges in totality.

¹⁵ Industrial Employment Standing Orders Act, (October 4, 2020, 1:33 PM) https://www.indiacode.nic.in/bitstream/123456789/12864/1/the_industrial_employment_%28standing_orders%29_act%2C_1946_no._20_of_1946_date_23.04.1946.pdf

- (iii) Requesting for more time to submit the explanation after inspection of certain documents which is in possession of the management.
- (iv) The employee may not submit the explanation at all.

The above four positions sought for the following actions:

- A detailed enquiry may not be conducted when the delinquent employee admits the charges that he accused which are of minor nature. If the misconduct is of a serious nature, the enquiry must be held irrespective of whether the employee admits the charges or no.
- When an employee submits an explanation in the form of a letter stating that the charges are baseless, false, motivated, a proper enquiry should be held before awarding any punishment.
- When a bona fide request is made on reasonable grounds by the aggrieved workmen seeking for extension of time to submit the notice stating his explanation, it is granted to avoid any further complications.
- If the employee fails to submit an explanation within the specified time limit, the management should take steps to hold a proper enquiry.¹⁶

Supply of relevant materials:

The enquiring authority may require documents in proof of charge of the alleged misconduct. According to the Principles of Natural Justice, such copies of those documents should be supplied to the delinquent workman. in the case of **Meenglass Tea Estate V. Workmen (1963)**, the Supreme Court held that the workman who is to answer to charge must not only know the accusation but also the testimony by which the accusation is supported.¹⁷

Examination of Witnesses:

The landmark judgement of the Supreme Court in the case of **Tata Engineering and Locomotive Co. Ltd. vs. S.C. Prasad, (1969)**, has given some general rules for examination of the witness.¹⁸

The Hon'ble Supreme Court held that if the allegations mentioned in the charge sheet are denied by the workman in the domestic enquiry proceedings, the burden of proof lies on the

¹⁶ Explanation by employee, Jstor, (October 3, 2020, 5:11 PM) <https://www.jstor.org/stable/43952119?seq=1>

¹⁷ Meenglass Tea Estate V. Workmen, Legal crystal, (October 4, 2020, 1:34 PM) <https://www.legalcrystal.com/cases/supreme-court-of-india/1963/2>

¹⁸ Tata Engineering V. S.C. Prasad, SCC Online, (October 5, 2020, 9:21 PM) <https://www.sconline.com/Members/SearchResult.aspx>

management for proving those allegations. The workman must also be given a reasonable opportunity to examine himself and can add any further pieces of evidence that he might choose in support of his plea.

(G) Final Report after the enquiry:

The Enquiry Officer must prepare a reasoned enquiry report which contains all the findings in the enquiry and submit it to the Authority, for pronouncing the punishment, if any.

The Tribunals should observe rules of Natural Justice in the process of conducting the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtained in a court of law, then the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act, for taking evidence was not strictly followed. If the Enquiry officer does not comply with the rules of Natural Justice, that does not give reasonable opportunity to the employee of being heard and to lead evidence and cross-examine, the witnesses of the opposite party or he himself is biased against the employee and the enquiry will be considered invalid.

(H) Punishment:

The management should decide the punishment purely on the basis of findings of the enquiry, past record of the worker and gravity of the misconduct. The punishment awarded to the worker must be communicated to him in written, as soon as possible. The letter of communication should contain reference to the charge sheet, the enquiry, the findings and the date from which the punishment is to be effective should also be mentioned.¹⁹

IV. OBSERVATION AND ANALYSIS

The Domestic Enquiry process as a fact-finding forum plays a crucial role in maintaining Industrial Relations and in ensuring a smooth functioning at the workplace. Most of the times, the employer himself, against whom an employee has a grievance functions as the authoritative officer of the enquiry. I have observed the following:

- As there are no set rules for awarding punishment, it creates a lot of biasedness. Standardizing the punishment for main kinds of misconduct would be a step towards ensuring the principles of natural justice.
- To give a fair chance to the employee to be heard, a representative could be elected from amongst themselves and also have an arbitrator who would be given the

¹⁹ Procedure for disciplinary action, Wisdom jobs, (October 1, 2020, 1:11 PM) <https://www.wisdomjobs.com/e-university/industrial-relations-management-tutorial-357/procedure-for-taking-disciplinary-action-11774.html>

authority to give decision at the enquiry

- During the suspension period, though the employee is entitled for a certain amount of compensation during the period, often the employee does not receive the amount he needs to be getting. A Union representative may be set up to ensure that the employees get their compensation.
- If the employee is dissatisfied with the procedure of the enquiry and the punishment awarded to him, for his right to appeal to be exercised, administrative tribunals could be set up, ensuring justice.

After carefully analysing, I have drawn a conclusion that there are many loopholes in the existing laws. This could work in favour of the employer as he, out of ill will, punish an unwanted employee with false accusations of misconduct. The employer may also delay the adjudicating procedure that may cause an irreparable injustice to the employees.

The main objective of conducting a domestic enquiry is to maintain the decorum of the workplace and maintaining industrial harmony between employer and employee as well as between an employee and his fellow employee. Domestic enquiry, with the help of a set of guidelines laid down in a Standing Order would also do wonders by reducing the burden on the Courts by playing the role of Alternative Dispute Redressal. This way, most of the petty grievances could be settled outside the courtroom itself.

Thus, the need for having a standard set of rules and guidelines laid down in the Standing Order is remarkable. This would ensure that the Principles of Natural Justice are followed uniformly by every organisation and employer, which would indeed ensure that both the employers and the employees get justice, at every stage of the disciplinary process. To conclude, there is still a scope to equip the institution to deliver a new era in the Industrial Jurisprudence.

V. CONCLUSION

After a thorough research on this topic, I have come to a conclusion that the Principles of Natural Justice are often violated with respect to disciplinary process in work places. Thus, the Indian Judiciary must appoint a panel of officers who are well versed with law and the principles of natural justice who must be empowered with quasi-judicial powers to hold enquiries to ensure the fairness in a disciplinary process. The Labour Courts and the Tribunals as provided under Section 11 of the Industrial Disputes Act would have less burden if there are set guidelines provided to hold a fair enquiry with respect to matters relating to

misconduct and resolving matters related to disciplinary issues. These issues must be given a very high importance as a smooth functioning of a workplace can be facilitated only with proper discipline. Yet, issues related to misconduct are often overlooked and no proper domestic enquiry is conducted. Often, the industries or the organisations let these trivial matters unresolved as they do not want to waste their time or get involved with the tedious procedures of the Labour Courts and the Tribunals. This is resolved internally, where most of the times, the employer fires the employee for no valid reason and the employee is helpless. This very much defines the basics of the Principles of Natural Justice and thus to protect the integrity of the Indian Judiciary as well as the aggrieved employees, a fair and a valid enquiry must be conducted and the issue must be resolved in a fair manner. This could be done by the appointment of a set of officers by the Indian Judiciary which would promote the Industrial discipline in India, overall.

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