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### BOOK REVIEWS/JOURNAL

#### DOMESTIC ENQUIRY AND LAW

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In Law, misconduct is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts. "Misconduct" includes something seen as unacceptable as well as criminal offenses *e.g.*, deceptive manipulation. "Gross misconduct" can lead to immediate dismissal because it is serious enough and possibly criminal, *e.g.*, stealing or sexual harassment. Misconduct refers to an action, rather than neglecting to take action, or inaction which could be referred to as poor performance.

#### *Examples of Gross Misconduct*

- (i) Illegal drug use/drug abuse or consumption of alcohol at workplace
- (ii) Fighting
- (iii) Sexual harassment at workplace
- (iv) Stealing
- (v) Subjecting people to discrimination
- (vi) Falsifying time records
- (vii) Falsification of accounts

(viii) Negligence

(ix) Bribery

(x) Gross insubordination/disobedience/  
misappropriation/Criminal misconduct

(xi) Conviction of a felony (in some states)

(xii) Illicit use

For the smooth functioning of an industry, the defined codes of discipline, contracts of service by awards, agreements and standing orders must be adhered to. In the event of an employee not complying with these codes of conduct, he is liable to face disciplinary actions initiated by the Management according to the Standing Orders. This procedure is called Domestic Enquiry and it is conducted in accordance with the standing orders/agreements.

Domestic enquiry is similar to a trial in a Court of law, but while a trial in a Court is for crimes done against society, domestic enquiry is conducted for offences committed against the establishment for misconduct, punishable under the standing orders/rules

and regulations of the organization. Further, while a trial in a Court is in accordance with the Criminal Procedure Code, Civil Procedure Code, Evidence Act, the domestic enquiry is conducted in terms of what is known as 'Natural Justice'. Also the enquiry officer while examining the evidence and pronouncing on the guilt is not authorized to penalize the employee. It is only the employer or the appointing authority also known as notified disciplinary authority who can pronounce the penalty.

Domestic enquiry is not considered as a legal requirement under the Industrial Disputes Act, or other substantive laws such as the Factories Act, Mines Act, *etc.*, but has been provided under the standing orders to be framed in the Industrial Employment (Standing Order Act) 1946. As a result it is now well-established that such standing orders have the force of law and constitute statutory terms of employment. The case law established over a long period has made it obligatory for the employers to hold a fair and just enquiry to prove the misconduct before awarding any serious punishment.

Dismissal of an employee without holding a fair and just domestic enquiry amounts to the violation of the principles of natural justice and is frowned upon by the Labour Courts/Industrial Tribunals and adverse conclusions may be drawn against the employer not holding a domestic enquiry, in so much so that the dismissal without holding a domestic enquiry is deemed to be illegal.

#### ***Definition of the Term-Domestic Enquiry :***

Based on the above description of domestic enquiry, we understand that the term domestic enquiry is mainly used to refer to an enquiry into the charges of indiscipline and misconduct by an employee. In common parlance, domestic enquiry means departmental enquiry or domestic Tribunal. In such enquiries, the matter is decided by

administrative officers and not by Courts of law. In cases of alleged indiscipline, it is common for disciplinary authorities in a department or in an industry to appoint an officer or officers to inquire into the allegations against an employee. These enquiries are commonly known as 'Domestic Enquiries'.

#### ***Domestic Enquiry and Departmental Enquiry :***

The term 'domestic enquiry' is commonly used in connection with an enquiry against industrial or commercial workers. On the other hand, the enquiry against Government Servant is called as a 'Departmental Enquiry'. But there is no hard and fast rule for use of these terms. Still there are essential differences between the enquiries into the charges against the industrial workers and Government Servants. The public servants have their safe guards provided in Article 311 of the Constitution of India. No such provisions are available for industrial or commercial workers. Also, the Public Servants Enquiries Act 1850 is in vogue in the statute book.

#### ***Principles of Domestic Enquiry :***

- (1) Rule of *Natural Justice* must be observed.
- (2) The delinquent is entitled to a just hearing.
- (3) He can call for his own evidence.
- (4) Cross-examine any witness called by the prosecution.
- (5) Where rules are laid down, the procedure of such rules must be followed.
- (6) Disclose to the employee concerned, the documents of records and offer him an opportunity to deal with it.
- (7) Do not examine any witness in the absence of the employee.
- (8) The enquiry officer is at liberty to disallow any evidence after recording the reasons in writing.

**Process of Domestic Enquiry – Charge-Sheet :**

When the management comes to know that a particular act of misconduct has been committed by an employee, they should hold a preliminary enquiry into the matter. Such an enquiry may be termed as Fact-Finding Enquiry. The delinquent may also be interrogated during the enquiry. The object is to arrive at a conclusion whether a *prima facie* case exists for taking disciplinary action against the workman concerned. In the preliminary enquiry, if the management is satisfied that an act of misconduct has been committed which would necessitate taking some disciplinary action against the employee concerned, then the charge-sheet will be issued. Charge-sheet is not an accusation made or information given in abstract but an accusation made against a person in respect an act committed or omitted in violation. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. The employer cannot justify his action on any grounds other than those contained in the charge-sheet. The charge-sheet, however, is not expected to be a record of evidence. The person signing the charge-sheet is not an accuser. He does not make himself responsible for the truth of the facts set out in charge-sheet. He merely tells the accused what he is supposed to have done. In the case of *Bennet Coleman & Co.*, 1956 LAC P2, the Court held that the charge-sheet must clearly set forth the charge and ask the delinquent to submit his explanation within a reasonable time, *i.e.*, within 24 or 48 hours depending on the gravity of the misconduct. The charge-sheet should mention the misconduct committed, the date and time of its commission and the relevant section of the standing orders under which the misconduct falls. There may, however, be a situation where an employee may commit an act of misconduct which does not fall under the list of misconducts mentioned in

the standing orders. Even, in that situation, 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. In the charge-sheet, as far as practicable, the same phraseology may be used as in the standing orders. This would help the worker to understand the charge clearly and the extent of punishment he may be inflicted upon. However, omission to refer the clause of standing orders in the charge-sheet does not make it irregular. The Supreme Court in the case of *Powari Tea Estate v. M.K. Barktaji*, 1965 (II) LLJ 102, held that the charge must not contain any expression which would give rise to reasonable apprehension in the mind of the workman against whom the enquiry is held that the management has already made up its mind as to his guilt. So, it must only state the misconduct alleged for which the enquiry has to take place. The charge-sheet must be signed by a competent authority. Usually, such a competent authority is the Disciplinary Authority who is also authorized to inflict punishment. The charge-sheet should be drafted very carefully and served properly. It is important that the charge-sheet contains the following details:

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

- (ix) The charge should be specific and clear and never vague, incidental matters not connected with the charge and or irrelevant should be

omitted from the charge. Where an employee is to be suspended prior to holding of enquiry it would not be proper to mention in the charge-sheet that "Considering the gravity of the misconduct, you are suspended from pay and duty". It would be appropriate to mention "pending enquiry into the charge framed against you, you are suspended from pay and duty". At no stage before the issue of final orders there should be any indication that management has pre-determined the outcome of the case. If the disciplinary authority is likely to be a witness in support of the charge, it would be preferable for some other officer of the company to sign the charge-sheet. In case he happens to be a witness he should never conduct the enquiry. The charge-sheet is usually served to the delinquent in the office time in the presence of a witness. If he refused to receive the same, it may be exhibited in the notice-board of the establishment. Another alternative is to send the charge-sheet by Registered Post/Acknowledgement Due' to the known postal address. If it still remains un-served it is necessary that the charge is published in two newspapers, one in English and another in the local language which has a large circulation. The same procedure may be followed while issuing letter calling the delinquent for enquiry. Relevant provisions of standing orders will have to be complied with while serving a charge-sheet. The obligation of the employer is only to send the notice to the accused. If he refuses to accept the notice, he does so at his own risk. The employer will be entitled to proceed with the enquiry *ex-parte*. Where a worker refuses to receive a charge-sheet, the same could be treated as misconduct and it would be desirable to issue another charge-sheet and the enquiry held on the original and on the second charge-sheet – if there is

specific mention in the standing orders listing out the 'refusal to receive the charge-sheet or communication' as misconduct.

### ***Enquiry:***

Enquiry means:

- (a) Hearing of the case
- (b) Recording Evidence
- (c) Admitting Documents
- (d) General completion of the records upon which a finding would be based

*Evidence:* General Aspect: Evidence in legal sense consists principally of oral testimony or witnesses, written documents and various other subjects perceptible by the senses.

*Proof:* Proof is the process of adducing evidence before a judicial body. The purpose of the proof is to aid the Tribunal in finding the facts.

### ***Important Aspects of Evidence:***

The correct method of appreciating and assessing the evidence of a witness is by scrutinizing the evidence on its merits and it is only when a doubt arises whether the witness is in fact deposing to the truth or not, that the necessity would arise to investigate into the possible reasons for his conduct and what would have motivated the same, such as intimate interest in the person on whose behalf he had come to give evidence, or strong enmity against whom he had come to give evidence.

### ***Evidence has to be weighed and not counted Important Aspects of Evidence:***

Demeanor, Veracity, Enmity, Bias, Low standard, Previous conviction, Doubtful character.

Sometimes the evidence may suffer because of:

- (a) Lapse of memory
- (b) Of inability to observe minutely
- (c) Recount and recite correctly

### ***Conducting the Enquiry***

When a person of authority or one who is competent to take disciplinary action gets a complaint, it is left to him to make such investigation of *Preliminary Enquiry* as he considers it fit together the information and find out the truth of the complaint and the evidence available in support of it. During such preliminary enquiry the person making the investigation need not follow any rules and regulations or principles of natural justice. Even the person against whom charges are going to be framed may be questioned during the process of preliminary enquiry.

### ***Preliminary Enquiry***

Before framing the charges the disciplinary authorities occasionally make a preliminary investigation or fact finding enquiry with a view to satisfy themselves whether any disciplinary action against the workmen should be launched or not. Such investigations are termed as preliminary enquiries. In such investigations there may be *ex-parte* examination and *ex-parte* reports. In *Fire Stone Tyres v. Their Workmen*, 1967 (II) ILJ 715 (SC), it was held that the depositions of the witnesses in such investigations, if any, or the reports in the investigations are meant merely for ascertaining whether there is any *prima facie* case justifying disciplinary proceedings.

### ***Purpose of Preliminary Enquiry***

Sometimes allegations against persons are made in a frivolous, reckless and prejudiced manner. A preliminary analysis may well throw light on the allegations and help the authority concerned to know if there is a *prima facie* case and there are good reasons to frame charges against the person. It would

be wrong to pre-determine the guilt of the person in a preliminary enquiry however strong the evidence gathered during the preliminary enquiry may be. Such an evidence could only help the authority to frame charges against whom certain allegations have been made. Preliminary enquiries are held as far as possible orally and only the person making the enquiry records it in writing.

### ***Enquiry Proceedings***

Before embarking on an enquiry, the management should be sure that a specific misconduct exists and that it is not ambiguous about the facts of the misconduct. Attempting disciplinary action, with extreme punishment on flimsy grounds and undependable witnesses, is dangerous. If it is not sure of the facts of the case from the evidence available, it will be better to take a lenient view and let off the workman with a warning. Where the explanation of the employee is not satisfactory and the management is sure of its case, a letter has to be sent to the delinquent stating that it has been decided to hold an enquiry into the charges on a particular date, time and place. In the same letter the following may be added. 'At the enquiry you will be given full opportunity to conduct your defence by examining your witnesses and cross-examining the witnesses against you. Should you fail to be present for the enquiry as advised, the enquiry will be held *ex-parte*.' An enquiry may be held for an employee individually or for several employees where acts of misconduct charged relate to several employees and the charge is common. It is better that the proceedings of the enquiry are recorded by the enquiry officer in his own handwriting. The delinquent should be asked if he understood the charges leveled against him. If the delinquent refuses, the charges be further explained to him, the enquiry officer should oblige him. The delinquent should also be asked if he accepts the charge. If he accepts the charge the matter normally ends there. But if he pleads

not guilty the enquiry proceedings start in right earnest. If the standing orders provide for giving assistance to the workman at the time of the enquiry either by allowing a union office bearer or a co-worker, a question should be put to the delinquent asking him whether he desires to avail the opportunity and the same should be recorded. If he says yes, such assistance should be allowed.

There is no rigid pattern in which an enquiry should be proceeded in examining the witnesses. But the normal pattern is that the evidence in respect of the charge is heard first one by one. Each of these witnesses would then be subject to cross-examination by the delinquent. When this is over, the delinquent should be asked if he has witnesses to give the evidence which would be subject to cross-examination by the management representative, if present. In cases where management has only one witness in support of the charge, the same person may go ahead with the cross-examination. But if reliance is made on more than one witness, it is better that the management appoints a representative to do the cross-examination. If the delinquent cites witnesses who are his fellow employees, arrangement should be made by enquiry officer to procure them. If the witnesses cited are outsiders over whom the employer has no control, it is the responsibility of the delinquent alone to present them at the enquiry. Care should be taken to see that all the witnesses are examined in the presence of the delinquent. Adjournments requested by the delinquent on reasonable grounds should be granted. Hastening the enquiry, disregarding the formalities to be observed will vitiate the enquiry. Signature of the person giving evidence should be obtained in every page where the evidence is recorded and also at the conclusion of the evidence. The enquiry officer, the management representative, the delinquent and his co-worker should sign the proceedings in all the pages.

### *Enquiry Findings*

The Enquiry Officer should narrate briefly the statement made and the evidence laid before him both in support of and against the charge. He should analyse each charge as to whether it is proved or not. The findings should not suggest any punishment. They should be supported by cogent reasons to be set out clearly in the report. The charge-sheet, explanation and record of enquiry and the findings of the Enquiry Officer will have to be submitted to the Disciplinary Authority, for decision. The decision and punishment, if any, shall be communicated in writing to the employee concerned as early as possible.

#### *The Enquiry Officer should also note*

- (a) To conduct the enquiry on an on-going basis and not postpone it on flimsy grounds.
- (b) To fix the date of the next hearing at the time of postponement and advise all concerned, in case postponement is granted under compelling circumstances.
- (c) To ensure that, if postponements are granted the next sitting commences at the earliest.
- (d) To route all communications addressed to employees/officials, calling them to attend the enquiry as Witness/Defence Representative/ Presenting Officer *etc.*, through the Branch Managers/Department Heads only.
- (e) To advise the Branch Manager/ Departmental Heads at the end of each sitting, by means of a letter mentioning the dates on which the enquiry was conducted to enable them to grant on-duty leave *etc.*, to the concerned employees/officials. This letter should be handed over to each of the employees/officials, who had attended the proceedings as Defence Representative/ Presenting Officer/Witness *etc.*, with instructions to deliver it to their Branch Managers/Dept. Heads concerned. Where the delinquent employee does not have a Defence Representative and would still like himself

and his witness examined, the Enquiry Officer should formulate the questions in the Examination-in-Chief and re-examination on behalf of the employee, the cross-examination being conducted by the Presenting Officer.

#### ***Ex-Parte Enquiry:***

While reasonable opportunity should be provided to the employee to defend himself, willful delay of the proceedings on his part on flimsy grounds such as the non-availability of Defence Representative *etc.*, should not be allowed. Where the enquiry is conducted *ex-parte*, the Presenting Officer will present his case by introducing the witnesses and documents in the usual manner. There will, however, be no cross-examination, since the defence is not present. The Enquiry Officer should also record all such proceedings as detailed above and proceed on merits of the case.

#### ***Examination-In-Chief:***

An examination-in-chief is one in which the prosecution defence asks questions of his own witness to bring out the facts of the case from that witness, which will help him prove his case. In the examination-in-chief, the party introducing the witness *i.e.*, prosecution or the defence should ascertain identity of the witness by asking a few questions relating thereto. The witness need not answer under oath. The prosecution/defence then proceeds to get answers by asking questions to establish the points, as may be required by it, through that witness.

#### ***Cross-Examination:***

After the examination-in-chief of each witness by prosecution/defence is over, the other side is permitted to cross-examine the witness to bring out any hollowness in his statements in the examination-in-chief. Questions to re-establish the averment of the witness and/or leading questions can, therefore, be asked during the cross-examination. This does not mean that questions which are offensive or irrelevant can be permitted.

#### ***Re-Examination:***

For the purposes of obtaining clarification on some of the points which emerged during cross-examination, the side which introduced the witness is allowed to re-examine the witness after the cross-examination is over.

#### ***Defence Representative and His Role:***

The charge-sheeted employee has a right to have him defended by a representative of a registered Trade Union of Bank Employees. He can also be represented by a Lawyer with the prior approval of the Disciplinary Authority. The Enquiry Officer should note that he has no powers to permit the delinquent employee to be represented by a Lawyer. If a request therefore is received, it should be referred to the Disciplinary Authority for his approval. It should also be noted that there can be only one representative for each employee. The role of the Defence Representative is to disprove the charges leveled against the delinquent employee in the charge-sheet. To this end, he will also produce documents and witnesses well in advance and cross-examine prosecution witnesses. He will also submit a brief to the Enquiry Officer, after going through the prosecution brief.

#### ***Awarding of Punishment by Disciplinary Authority:***

On receipt of the proceedings and findings of the Enquiry Officer, the Disciplinary Authority should forward a copy of the findings of the Enquiry Officer to the delinquent employee and advise him to submit his comments on the findings of the Enquiry Officer within a specific period of time. On receipt delinquent employee's comments or after expiry of specific period of time given to delinquent employee to submit his comments, the Disciplinary Authority should come to his own conclusion by going through all the papers and applying his mind dispassionately. He should also record his views on the Enquiry Officer's findings in respect of each charge separately.

***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.

***Consideration of the Past Record:***

The Disciplinary Authority should also go into the past record of the employee while awarding the punishment. When it is favourable to the employee and the misconduct committed by and approved against him is of a minor nature, the Disciplinary Authority may take a lenient view. In case of adverse past record, it should be disclosed to him (employee) in the show-cause notice and he should be given an opportunity to explain the same. The past record is relevant only for the purpose of awarding punishment and not for finding whether the employee is guilty or not of the charge. After considering all the above factors, and after affording a personal hearing to the employee, the Disciplinary Authority will issue the final order reducing or confirming the punishment already proposed or exonerating the employee, as he may deem fit.

***Appeal:***

An employee can appeal to the Appellate Authority against the decision of the Disciplinary Authority. But it should be done within a specified time limit from the date of communication of the final order of punishment by the Disciplinary Authority. The Appellate Authority should also give a personal hearing to the employee if so required by him in case of dismissal. He may also be permitted to be represented by a Defence Representative. At the stage of appeal, the punishment awarded by the Disciplinary Authority can only be retained or reduced but not enhanced by the Appellate Authority. The appellate authority should dispose of the appeal within a stipulated time.

***Punishments:***

The Power to punish his employee is derived from the inherent right of maintaining discipline vested in the employer. Without the existence of this power, there would be total indiscipline and the successful working of the establishment would become impossible.

In the master-and-servant relationship, the master has almost an unrestricted power of punishing his servant. He can at any time dismiss his servant, and the latter can only claim damages for breach of contract. He can also, instead of dismissing the servant, punish him by deducting his wage, except in violation of his contract of service, or necessity of holding an enquiry before taking disciplinary action.<sup>1</sup>

In the case of industrial employees, however, it is necessary to hold a domestic enquiry before inflicting any punishment on the worker. This rule has been evolved by the Courts in order to maintain harmonious industrial reaction so that production may not be hampered. As observed by the Supreme Court. The doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice.

***Types of Punishment:***

Rule 13 of Civil Services Rules, 1957 enumerates the following punishments:

- (1) Withholding of increments or promotion,
- (2) Recovery from pay of the whole or part of any pecuniary loss caused to the Government,
- (3) Reduction to a lower service, grade or post, or to a lower stage in a time scale,
- (4) Compulsory retirement,
- (5) Removal from service which shall not be a disqualification from future employment,
- (6) Dismissal from service which shall ordinarily be a disqualification for future employment.

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1. Justice *Markandey Katju* – ‘Domestic Enquiry’ 6th Edition, Butterworth India, C-71-A, Malviya Nagar, New Delhi – 110017.