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Investigating Workplace Conduct: Navigating the Terrain of Departmental Inquiries

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Without a doubt, an organization's most valuable resource is its people. To achieve the objectives of the organization, the human resource leverages other organizational resources. Making the most of the organization's human resources is the aim of the people resource department, also referred to as the personnel department, P&IR, and so on. The Human Resource Department's subsystems, including Grievance Handling, Counseling, Performance Appraisal, Career Planning, Training & Development, and others, assist in achieving this objective. The Reward and Punishment System is one of the Human Resource System's subsystems. All organizations, whether semi-public, public, or private, need to have a well-defined system of rewards and penalties to guarantee that staff members are driven to strive toward the company's goals. The purpose of the punishment system is to deter employees from working against organizational goals, while the reward system motivates workers to put in more effort in order to achieve those goals. Misconduct, also referred to as non-conforming behaviour, can be dealt with in a number of ways, such as counselling, issuing warnings, and so forth. If an employee's actions fall within the purview of the nation's penal laws, the employer may also take appropriate legal action against them in severe situations, such as theft, fraud, criminal breach of trust, and so on.

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INTRODUCTION - DEPARTMENTAL ENQUIRY

A 'Departmental Enquiry' is an examination of claims of misconduct and lack of discipline among staff members. A departmental inquiry may also be referred to as a domestic tribunal or inquiry. In these situations, administrative staff members make the decisions rather than judges. It is customary for disciplinary authorities in a department or organization to designate an officer or officers to look into allegations of indiscipline made against an employee. These kinds of inquiries are referred to as domestic inquiries.

A 'domestic enquiry' is the term typically used to describe a probe into industrial or commercial workers. On the other side, an inquiry against a government employee is referred to as a 'Departmental Enquiry.' On the other hand, there isn't a strict guideline for using these expressions. Even However, there are notable differences between the inquiries into claims made against government personnel and those made against industry workers. Article 311 of the Indian Constitution¹ guarantees the safety of public personnel. For industrial or commercial workers, there are no such protections. Furthermore, the Public Servants Enquiries Act of 1850² is still in force today.

In cases of employee wrongdoing, the disciplinary committee of the respective establishment conducts a disciplinary investigation. The following people usually make up such a committee:

- Workers Representative, as such term is defined in Industrial Employment (Standing Orders) Central Rules, 1946, Rule 14(4) (b-a).³
- Representative of Employees, such as the head of the department in which the employee was employed; and
- An impartial officer is occasionally referred to as an investigation officer.

The administrative officer holds an internal hearing to determine if the workers are guilty of the alleged misbehaviour. Domestic Enquiry is required when an employee is fired; however, it is not required when an employee is suspended as a penalty.

¹ Constitution of India 1950, art 311

² Public Servants Enquiries Act, 1850

³ Industrial Employment (Standing Orders) Central Rules 1946, s 14

There is no definition of 'misconduct' in any of the statutes governing India's labour regulations. In the case of *State of Punjab v Ram Singh Ex.*⁴, Constable stated that misconduct can contain moral turpitude, improper or wrongful activity, willful in character, committing an act that is prohibited or a violation of well-established standards of action or code of conduct, according to the Supreme Court's ruling. The Supreme Court, however, was quick to clarify that the phrase 'misconduct' does not encompass a simple lack of judgment, carelessness, or negligence in the performance or carrying out of obligations.

The main purpose of these questions is to prevent the employee from being unfairly punished when he is innocent and to provide him with the chance to thoroughly explain his viewpoint. Delinquent employees must also be granted the flexibility to select the person who will represent them during the investigation, as well as a fair chance to address the charges brought against them. After reviewing the terms of the investigation and the adjudication, the enquiry officer will have the authority to approve or disapprove the delinquent's legal representation if the domestic inquiry norms do not specifically forbid it.

GUIDELINES FOR DEPARTMENTAL RESEARCH

There are a few guidelines that need to be followed when conducting departmental inquiries. Following are a few of the regulations:

Principles of Natural Justice: To guarantee justice, or to put it another way, to avoid injustices, is the aim of natural justice legislation. These rules are only applicable in areas that have not been subject to any lawfully passed legislation. Put another way, they supplement the law rather than replace it. The rules that the courts have set down as the least restrictive means of safeguarding a person's rights from capricious methods employed by judicial or quasi-judicial authorities when issuing an order that impacts those rights are known as natural justice principles. These regulations prevent such officials from acting improperly.

While maintaining objectivity toward the workers, industrial institution management must abide by the principles of natural justice. The employee who is considered delinquent is supposed to be informed of the accusations made against him and provided with a chance to

⁴ *State of Punjab and Ors v Ram Singh Ex. Constable* (1992) 4 SCC 54

defend himself and establish his innocence. Evidence should be presented in his presence during the investigation, and he must be given the chance to cross-examine the witnesses in his defence. If someone is found guilty, their punishment ought to be commensurate with their transgression. The Industrial Employment (Standing Orders) Act 1946⁵ specifies these natural justice principles in Sections 2(b)⁶, 5(2)⁷, 10A (2)⁸, and 13A⁹.

There are majorly two major principles that need to be kept in mind while applying the principles of natural justice:

Nemo in propria causa judex, esse debet - The maxim's meaning is that an individual cannot sit as a judge in their own case. The rule against bias is another name for this. As a minimum requirement of natural justice, the authority rendering the decision must be made up of impartial persons operating fairly, without prejudice or bias. Bias is the term used to describe an operational prejudice, whether conscious or unconscious, against a party or an issue as a result of some predetermined belief or propensity. The dictionary defines bias as anything that leads someone to base their decision on something other than the available information.

Audi alteram partem - The maxim basically states that no one should be put on trial before having a fair trial. Before issuing any orders, both sides should be heard, and no man should be condemned without being heard. According to De Smith, 'no proposition can be more clearly established than that a man cannot be taken to court and have his liberty or property taken away from him for an offense until he has been given a fair opportunity to answer the case against him.' A party shall not suffer in person or financially without a chance to be heard.

In the case *Union of India v T. R. Verma*¹⁰, it was held that the charge sheeted employee must have the opportunity to present relevant evidence, that the employer's evidence must be taken in his presence, that he must have the chance to cross-examine the witnesses called on his behalf, and that no materials should be used against him without first providing him with an

⁵ The Industrial Employment (Standing Orders) Act 1946

⁶ Industrial Employment (Standing Orders) Act 1946, s 2(b)

⁷ Industrial Employment (Standing Orders) Act 1946, s 5(2)

⁸ Industrial Employment (Standing Orders) Act 1946, s 10(2)A

⁹ Industrial Employment (Standing Orders) Act 1946, s 13A

¹⁰ *Union of India v T. R. Varma* (1957) 13 FJR 237

opportunity to clarify. These are the fundamental principles of natural justice. The evidence gathered during an investigation cannot be contested after the process has been followed.

Right to Make Representation: The Indian Supreme Court views legal representation as an essential component of the legal process. The court declares that it is illegal and illegitimate to deny someone their freedom without legal counsel. In quasi-judicial processes such as disciplinary investigations, lawyers are typically not considered necessary. Administrative tribunals do, in fact, aim to offer a de-professionalized dispute resolution mechanism; hence, statutes occasionally forbid lawyers from taking part. It was established in the case of *Union of India v Mohd Ramzan Khan*¹¹ that a delinquent worker shall have the opportunity to defend himself against the conclusions stated in the inquiry report submitted to the disciplinary body.

Fundamentally, the ability to call their own evidence and cross-examine any witnesses the prosecution calls must be granted to the employee. When particular guidelines or protocols are established, they must be adhered to rigorously. Additionally, any pertinent data and documentation must be delivered to the employee, along with a chance for them to be addressed. Importantly, impartiality and transparency are guaranteed since no witness may be questioned without the employee present. Lastly, even though the investigation officer is free to reject any evidence, they are required to document their reasoning in writing to prevent arbitrary judgment calls. When taken as a whole, these guidelines emphasize how crucial it is to have an unbiased, fair, and employee-rights-abiding disciplinary procedure.

PROCEDURE FOR DEPARTMENTAL ENQUIRY

According to the principles of natural justice, no one can be punished or condemned without first being given the chance to present their case. In light of this, the Industrial Tribunals have instituted the subsequent protocol:

PRELIMINARY ENQUIRY

Discipline authorities may carry out a preliminary investigation or fact-finding inquiry before drafting the charges in order to decide whether or not to pursue disciplinary action against the

¹¹ *Union of India v Mohd. Ramzan Khan* (1991) AIR 471

employees. These kinds of investigations are known as preliminary inquiries. Such investigations may make use of ex-parte reports and examinations. The reports in such investigations, as well as any witness depositions, are solely intended to ascertain whether there is a preliminary basis for disciplinary action.¹² Accusations against people are sometimes made in a frivolous, careless, and prejudiced manner. A preliminary investigation could clarify the allegations and help the investigating agency decide whether there is enough evidence to bring charges against the person and whether there is a prima facie case. Regardless of how compelling the evidence gathered during the preliminary inquiry is, it would be erroneous to assume someone is guilty based only on information obtained during the investigation. The authorities may only use this material to support their accusations against people who have been charged with specific crimes. Whenever feasible, preliminary questions are asked verbally, and only the person asking them writes down what they learn.

In the case decided by the Calcutta High Court, *Amulya Ratan Mukharjee v Eastern Railway*¹³ it was held that:

- 'Before making a charge, the Authorities are entitled to have a preliminary investigation or a 'Fact-Finding enquiry' when they receive a complaint from an employer. This is not considered to be a formal enquiry at all and in such an enquiry, no rules are observed.
- There can be an ex-parte examination or investigation and an ex-parte report. All this is to enable the authorities to apprise themselves of the real facts and to decide whether the employee should be charge-sheeted.
- But the departmental enquiry starts from the charge sheet. The charge sheet must be specific and must set out all the necessary particulars. It is no excuse to say that the delinquent who had knowledge of previous proceedings should be taken to have known all about the charge sheet.'

¹² *Employers of Firestone Tyre and Rubber v Their Workmen* (1967) 1 SCWR 58

¹³ *Amulya Ratan Mukherjee v Deputy Chief Mechanical Engineer* (1962) 5 FLR 71

CHARGE SHEET

When management becomes aware of a specific instance of employee misconduct, it is essential to undertake a preliminary investigation, often referred to as an inquiry into the facts. During this phase, the employee in question may be subjected to questioning. The primary objective is to ascertain whether a prima facie case of wrongdoing exists. If the preliminary investigation yields sufficient evidence to suggest that misconduct has occurred, management may proceed with disciplinary action against the individual. This process will culminate in the creation of a charge sheet. It is important to note that a charge sheet does not constitute a formal accusation or a comprehensive disclosure of information; rather, it serves as a formal assertion against an individual concerning an act or omission that violates established laws or regulations. In essence, it represents a formal charge against a person for an alleged offense. Beyond the reasons articulated in the charge sheet, the employer is unable to substantiate any further actions taken against the employee.

‘Charges should be specific and precise based upon the statement of allegations and ought to be related to the misconducts specified under the service rules or the certified standing orders applicable to the establishment. The following considerations may be kept in mind while framing the charges.

- Are the charges definite and clear?
- Are several charges against a single offence?
- Is there a merger of distinct offences in one charge?
- Are the charges logically framed? Do they flow logically from the nature of the allegations made?’¹⁴

In the case of *Sur Enamel and Stamping Works (P) Ltd. v Their Workmen*¹⁵, it was held by the apex court that, ‘in an attempt to lay down the procedure for conducting an enquiry for industrial adjudication, provided that an enquiry cannot be said to have been properly held unless:

¹⁴ T. Giri, ‘The Four P’s of Domestic Enquiry’ (2012) 1(2) International Journal of Multidisciplinary Educational Research <<https://www.ijmer.in/pdf/volume1-issue2-2012/199-202.pdf>> accessed 19 April 2024

¹⁵ *Sur Enamel and Stamping Works (P) Ltd. v Their Workmen* (1963) 1 SCJ 334

- The workman proceeded 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, and
- The Enquiry Officer must record his findings with reasons in his report.'

APPOINTMENT OF THE ENQUIRY OFFICER

An Enquiry Officer is a Disciplinary Authority agent who is on a fact-finding expedition. He resembles a judge or a 'Quasi-Judicial Tribunal,' as the case may be. He is expected to perform the investigation in an objective, unbiased, and fair manner while keeping an open mind. He should not be the Presenting Officer or the Defense Representative. He is not required to observe court rules or processes or to apply the provisions of the Evidence Act or any other law. If the delinquent employee objects to the enquiry officer conducting the investigation because the officer has a bias or prejudice against him, the inquiry officer should send the case to the disciplinary authority before proceeding with the investigation.

In the case of *Saran Motors Pvt. Ltd. New Delhi Vishwanathan*¹⁶, the court held that the competent authority should appropriately and duly authorise the inquiry officer to conduct a domestic investigation into the complaints levelled against an employee. An enquiry officer can be appointed by anyone, even if they are not a member of the public, as long as the rules or Standing Orders do not prohibit it. The Enquiry Officer is required to explain the investigation and charge sheet procedures to the concerned worker.

SUSPENSION DURING PENDING ENQUIRY

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

¹⁶ *Saran Motors Pvt. Ltd., New Delhi v Vishwanathan* (1964) 11 LLJ 139

- At the rate of 50% of the wages which the 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.¹⁷

NOTICE OF ENQUIRY

The employee must transmit the charge sheet reply to the appropriate authority as soon as he receives it. The authorities may give such an employee a show-cause notice if they are not satisfied with the response they have received. It was held in the case of *Associated Cement Co. Ltd v Their Workmen and Ors*¹⁸, '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.'

EXAMINATION OF THE WITNESSES

There are no specific rules or procedures for conducting the examination of the witnesses as prescribed under labour law. However, the Supreme Court in the case *Tata Engineering and Locomotive Co. Ltd. v S.C. Prasad*¹⁹ laid down some general guidelines for the examination of the witnesses in cases of departmental enquiry. The rules laid down are as follows:

- 'If the allegations mentioned in the charge sheet are denied by the workman in the domestic enquiry proceedings, the onus for proving those allegations will be upon the shoulders of the management and;
- The witnesses, called by the Management, must be allowed to be cross-examined by the workman and;
- 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.'

¹⁷ Institute Of Secretariat Training and Management, *Handbook For Inquiry Officers And Disciplinary Authorities* (Government of India 2013)

¹⁸ *Tata Oil Mills Co. Ltd v Its Workmen* (1964) 9 FACLR 142

¹⁹ *Tata Engineering and Locomotive Co. Ltd. v S.C. Prasad* (1969) 11 L.L.J. 799

REPORT SUBMITTED BY ENQUIRY OFFICER

Following the employer and employee's hearing, the Officer is required to compile all of the investigation's findings into a reasoned inquiry report, which they are then required to submit to the Authority. Lastly, it is the duty of an enquiry officer to forward the Report to the Accused. The disciplinary authority is tasked with reviewing the enquiry officer's findings and determining the appropriateness of any punishment. A delinquent worker's offense should not be more serious than the penalty. The phrase 'substantial justice' describes this. Naturally, the disciplinary authority is free to disagree with the findings of the domestic investigation and is not required to follow them. If the disciplinary authority is not in agreement with the inquiry officer's findings, he needs to explain why. It is against the principles of natural justice to fail to do so.

In the case of *Assam v Bimal Kumar Pandi*²⁰, it was held that 'the dismissing authority's preliminary conclusions in that regard needed to be made clear in the second notice if they differed from the conclusions noted in the report of the investigating officer. It's possible that the dismissing authority disagrees with the report's conclusions, which support the delinquent officer. It would be evidently required in such a circumstance for the dismissing authority to explicitly explain that it deviates from the conclusions documented in the enquiry report, followed by a description of the planned course of action against the guilty official. It would not be able to issue the notification at all without including such an express statement.'

CONCLUSION AND SUGGESTIONS

Regardless of whether an act or omission by an employee is considered misconduct, it must adhere to the list stated by the Industrial Establishments (Standing Order) Rules. Though no specific legislation or rule establishes the process for carrying out a disciplinary investigation, a number of Industrial Tribunal rulings have provided a general framework for what steps should be taken in such cases. The fundamental tenet of natural justice, which must be followed at every turn to guarantee the administration of justice, will be the main guideline for the investigation. Natural justice has been characterized as universal and fundamental justice. The foundation of

²⁰ *Assam v Bimal Kumar Pandi* (1963) 1 LABLJ 295

Domestic Enquiry is these powerful concepts of Natural Justice. The purpose of this entire organization was to safeguard workers' rights and interests during a period of increased labour disputes.

Domestic investigation is not considered a legal need under the Industrial Disputes Act or other substantive laws like the Factories Act²¹, Mines Act²², and so on, but it is provided for in the Industrial Employment (Standing Order Act) 1946²³. As a result, it is now widely accepted that such standing orders have legal effect and constitute statutory employment terms. Dismissal of any employee without conducting a fair and just domestic investigation is considered a violation of natural justice by Labour Courts/Industrial Tribunals, and adverse conclusions may be drawn against the employer for failing to conduct a domestic investigation, to the point where dismissal without conducting a domestic investigation is deemed illegal. Where a labourer is blamed for an offense, a departmental enquiry must be held against him as per the arrangements contained in the Standing requests administering the modern foundation or without such Standing request as per the standards of regular equity. After such a departmental enquiry is held it would be available to the business to force a punishment including one of end of administration howsoever styled. However, it is possible that an employee will commit an act of misconduct that does not come under the list of misconducts listed in the standing rules. Even in that case, the employer is free to take disciplinary action for the sake of maintaining discipline and order in his workplace, but the issue must be handled in a reasonable and common-sense manner. An employee is expected to do his duties and work in a responsible manner without doing any misconduct in the organisation where he is working. The procedure for departmental enquiry of a government servant is a lengthy one. But once a disciplinary action is taken against him then he can be absolved only once the whole process of departmental enquiry is concluded against him.

²¹ The Factories (Amendment) Act 1987

²² The Mines (Amendment) Act 1983

²³ The Industrial Employment (Standing Orders) Act 1946