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CHAPTER-IV

4.1 DOMESTIC ENQUIRY VIS-À-VIS INDUSTRIAL RELATIONS

4.1.1 DOMESTIC ENQUIRY : CONCEPTUAL ANALYSIS

“Domestic” (from the latin word ‘domus’ – means ‘house’) has an adjective meaning, ‘belonging to the house’ or ‘remaining much at home’ or ‘relating to internal affairs’ or ‘private’ (as opposed to public) and 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’.

Thus, ‘domestic enquiry’, in the context of Industrial management as opposed to Governmental management of legal functions – means management’s search for truth or otherwise of facts/ circumstances / allegations / charges alleged by it against its employees.

This institutions is an off shoot of the philosophy of social Justice, sanctified by statutes, Judicial Pronouncements and rules made under them and fortified by the fundamental rules of Natural Justice.

“Domestic Enquiry” was of no import or relevance to the law of master and servant, in the context of philosophy of laissez faire, which one held the field every where prior to Industrial Revolution. Then ‘contract’ rather than ‘status’ was the basis of relationship of master and servant. Master then had absolute uncontrolled and unregulated powers of ‘hire and fire’ and the parties, besides their implied obligations and rights could provide for any express terms, provided the same is done by free consent and is for lawful consideration and for a lawful object and is not expressly declared to be void under any law (implied obligations of servant were faithfulness, competence, satisfaction to the master, obedience and dutifulness, diligence). The master was absolute Judge in these matters and he was only answerable to the Courts under common law, if any when any action for damages was brought against him by the employee and that too under law of contract only.

Under the common law, slowly a practice was developed to the effect that the Courts insisted upon the employer to hold an impartial fact finding enquiry before taking any disciplinary action against the delinquent employee. After Industrial Revolution and with the introduction of Factory System in productions, a new horizon of employer – employee relationship ultimately emerged out of the concept of interventionist Welfare State and Trade Union movement. The employer's right to hold the Domestic Enquiry against a delinquent employee for committing misconduct still exists, but now the law requires that the employer shall conduct the Domestic Enquiry in compliance with the principles of Natural Justice.

4.1.2 CONCEPT OF MISCONDUCT

An organization is a living social organization wherein employers and employees work to satisfy their economic as well as sociological and Psychological needs. This essentially calls for balancing of 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. It forms the backbone of the industrial management. 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. It implies willingness to work and conforming to the established rules. Obedience to lawful orders is contemplated under the contract of service.

Discipline is a behavioral question concerning human resources. 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. A normal employee likes to work to grow and to get recognized.

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. Hence, it is important to understand what precisely amounts to 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.

Though, it is very difficult proposition to give any exhaustive definition of Misconduct, we can broadly group the misconduct in three categories :-

Misconduct relating to work i.e. non-performance or negligence of duty; absence without leave or overstaying sanctioned leave without permission, absence from the place of work unauthorisedly, disregard of safety equipment and procedure, guidelines.

Misconduct relating to discipline i.e. in 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.

Misconduct relating to integrity i.e. theft, fraud or dishonesty, giving false information misappropriation of employers money, etc.

Under clause 14(3) of the Industrial Employment (Standing orders) Central Rules, 1946, the following acts and omissions shall be treated as misconduct.

- (a) Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- (b) Theft, fraud or dishonesty in connection with the employers business or property.
- (c) Willful damage to or loss of employer's goods or property.

- (d) Taking or giving bribes or any illegal gratification.
- (e) Habitual absence without leave or absence without leave for more than 10 days.
- (f) Habitual late attendance.
- (g) Habitual breach of any law applicable to the establishment.
- (h) Riotours or disorderly behaviour during working hours at the establishment or any act subversive of discipline.
- (i) Habitual negligence or neglect of work.
- (j) Frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month.
- (k) Striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law.

Clause 17 Schedule 1A of the Industrial Employment (S.O.) Rules 1946 prescribes what constitutes misconduct in Coal Mines. It includes (1) any breach of the Mines Act, 1952 or any other Act or any rules, regulations or bye-laws thereunder or of any standing order; (2) failure or refusal to wear or use any protective equipment given by the employer.

The Supreme Court has very rightfully observed :

“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”.¹

4.2 BASIC PRINCIPLES FOR DOMESTIC ENQUIRY

4.2.1 NATURAL JUSTICE IN DOMESTIC ENQUIRY

A domestic enquiry is a quasi-judicial proceeding and as such one of its essential requirement is that the rules of natural justice have to be observed in holding it.

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.

Rules of Natural Justice is meant those basic 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.²

Rules of Natural Justice is a matter of substance, not of form. It includes two basic principles of Equity.

1. No one shall be a judge in his own cause (*nemo iudex in propria causa sua*) i.e. he must not have anything like personal interest in the case,
2. No decision shall be given against a party without affording it a reasonable hearing (*audi-alterem partem*).

4.2.1.1 PRELIMINARY ENQUIRY - It is customary and in complicated case, it is desirable to have a Preliminary Enquiry/Investigation into the allegations/accusations against a workman, for finding out whether there is any prima facie case justifying initiation of formal proceedings.

Preliminary enquiry is made solely with a view to decide whether there is adequate material for initiating a Domestic Enquiry against a workman. In other words, the preliminary enquiry is merely for the purpose of framing a charge and for determining

whether a prima facie case for a formal enquiry is made out or not and results can not be deemed to be conclusive. It is conducted merely for the satisfaction of the employer and it is only when the employer decides to held 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. It may start on the complaint being lodged 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 of the offence and it is not necessary in all cases where misconduct is alleged. The Statements recorded during the preliminary enquiry make 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 attention of the witness to the same and seek clarification on those points.³

4.2.1.2 ESSENTIALS OF A FAIR ENQUIRY : The procedure of the domestic enquiry which is generally accepted has been evolved and governed by three factuals viz. the service rules/slanding orders, the method followed by courts of law and the principles of natural justice.

An enquiry cannot be said to have been properly held unless (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 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.⁴

4.2.2 CHARGE AND CHARGE SHEET : The Domestic enquiry starts the moment the charge sheet is issued to the workman. Charge sheet or show cause notice is meant to appraise the concerned employer with the details of the misconduct alleged against him. The charge sheet should mention the misconduct committed, the date and time of its

commission and relevant section of the standing orders under which the misconduct falls. Charge sheet is issued calling upon the delinquent employee to submit his written explanation within a specified period of time.

4.2.3 SERVICE OF THE CHARGE SHEET : 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. Generally the charge sheet framed against an employee should be served on him personally, if possibly, 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.⁵

4.2.4 SUSPENSION PENDING ENQUIRY : An employer may suspend a workman on finding that misconduct complained against him is of grave and serious nature. The presence of the employee on the workplace, if considered dangerous for the security and maintenance of order and discipline in the establishment or it is greatly apprehended that he may tamper with the evidence, the delinquent employer may be suspended.

The employer may do so as measure of security to the life or property of any person or of the management, or to avoid the possibility of the employee using his influence, in winning over the witnesses threatening or intimidating them or in tampering with the evidence and official records. Suspension means that the contractual relationship between the employer and the employee remain in abeyance for the period of suspension.

Suspension can be ordered either before the issue of charge sheet or after the receipt of reply of the employee or at any time during the pendency of the enquiry proceedings or after the findings of the enquiry varying according to the circumstances Discipline and Appeal Rules, Standing orders provide for the payment of subsistence allowance by the

employer during the period of suspension pending departmental enquiry or criminal proceedings.

In the departmental enquiry the subsistence allowance for the first 90 days is one half of the emoluments and shall be three fourth if exceeds the above period. But if the enquiry is prolonged beyond 90 days for reasons attributable to workman, the subsistence allowance shall be reduced to one fourth of the emoluments.

Rule 14 of Industrial Employment (Standing orders) Central Rules, 1946 provides :

Disciplinary action for misconduct :

4(a) where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceeding against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.

4(b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of Section 10A of the Act.

(ba) In the enquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.

(bb) The proceedings of the inquiry shall be recorded in Hindi or in English or in the language of the state where the industrial establishment is located, whichever is preferred by the workman.

(bc) The proceedings of the inquiry shall be completed within a period of three months provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer.

Section 33(1) of the Industrial Disputes Act, 1947 provides that during the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or a Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -

- (a) In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute/save with the express permission in writing of the authority before which the proceeding is pending.

In cases falling under Section 33(1) unless prior permission in writing is granted by the appropriate authority, the employer cannot discharge or dismiss the workman, but he can suspend such workmen after holding the enquiry and on finding him guilty of the charges levelled against him before applying for permission. The effect of such permission in case of the 'permission' being given, would be that the order of dismissal would relate back to the date on which the employer suspended the workmen on coming to the conclusion that dismissal was the proper punishment for the permission of which he made the application.

For a Government Servant, Rule 10 of Central Civil Service (Classification, Control and Appeal) Rules, 1965 provides law relates to suspension. A Government Servant may be placed under suspension under Rule 10(l)(a) of the Rules in the following circumstances-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

Section 10A of the Industrial Employment (S.O.) Act, 1946 (inserted by Act No. 18 of 1982 w.e.f. 17.5.1982) provides :

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

1. at the rate of fifty per cent of the wages which workman was entitled to immediately preceeding the date of such suspension, for the first ninety days of suspension; and
2. at the rate of seventy-five per cent 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.

If an order of dismissal is passed, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered. The payment of above subsistence allowance is subject to the workman not taking up any employment during suspension. Suspension after proper enquiry can also be imposed as a punishment.

4.2.5. CONSIDERATION OF EXPLANATION BY EMPLOYER :

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.
- (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 :

- (i) Where the employee admits the charges which are of minor nature and begs for mercy, a detailed enquiry need not be held and a decision may be taken accordingly on the charge sheet. Care is taken that the admission of guilt must be recorded in writing and signed by two witnesses including the delinquent employee.

If, however, the misconduct is of a serious nature warranting discharge or dismissal enquiry should be held, notwithstanding the admission of charges.

- (ii) In case where the workman submits an explanation mentioning that the charges levelled against him are baseless, false, motivated, a proper enquiry should be held before awarding any punishment.
- (iii) When the workman concerned makes a bona fide request on reasonable grounds for extension of time to submit explanation, the same is generally granted to avoid any further complications.
- (iv) In the circumstances where the delinquent employee fails to submit any explanation within the specified time limit, the management should take steps to hold a proper enquiry.

4.2.6 APPOINTMENT OF ENQUIRY OFFICER :

After a careful consideration of explanation of the delinquent employee or when no reply is received within the specified time limit, the management should appoint an enquiry officer to hold an enquiry against the delinquent employee. The enquiry officer may be an official of the company or even an outsider, but the enquiry officer should be an impartial person with an open mind, free from any bias, prejudice and a person of high

integrity and moral values. One who will be a witness in the ensuing enquiry or has any personal interest in the case is not eligible to be the enquiry officer.⁶

4.2.7 NOTICE OF ENQUIRY : The immediate duty of an enquiry officer is to send notice to all the parties i.e. the delinquent employee and the management directing them to present with the witness/documentary evidence, if any, for the enquiry. The notice of the Enquiry should clearly mention the date, time and place of enquiry and that if the workman fails to attend the enquiry on the appointed date and time, the same shall be held ex-parte. The enquiry officer must give a reasonable period of time to the delinquent employee for the preparing his defence and collecting evidence, which may be led during the enquiry.

It must, however, be pointed out that there is no hard and fast rule as regards the time which must be given before an enquiry if held, and one has to see the facts and circumstances of each case to determine whether a reasonable opportunity for setting up a defence has been given or not.⁷

4.2.8. THE MANAGEMENT REPRESENTATIVE : The Management Representative is a person who will lead the case from the Management side in support of the charge. He has a right to cross examine the charge sheeted employee as well as the witness produced by him.

4.2.9 REPRESENTATION OF THE CHARGE SHEETED EMPLOYEE : There is no denying a fact that no enquiry can be held as per the procedure in the absence of the charge-sheeted employee. If, however, 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, the enquiry may proceed ex-parte, provided in the notice of enquiry, a specific mention to that effect had been made. If during the enquiry the charge sheeted workman withdraws himself, the same may be held ex-parte. A charge-sheeted employee may be represented by Co-worker or the union/association executives. Generally, the standing order provides Rules in this regard.

At time, there is a request by the delinquent employee that he needs the assistance of a lawyer for representing his case. Such request should be decided by the

enquiry officer and not by the management. 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.⁸

In *Board of Trustees of the Port of Bombay V. Dilip Kumar Raghav Venkaranath*,⁸ the Supreme Court observed, “the matter would be in the discretion of the Enquiry officer 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..... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, 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.”

4.2.10 EVIDENCE : RULES OF NATURAL JUSTICE - The Strict technical rules of Procedures of the Indian Evidence Act do not apply even to the adjudicatory proceedings before the adjudicatory authorities under the Industrial Disputes Act. , much less would they ‘apply to domestic enquiries’⁹

The Law requires that such Tribunals should observe rules of Natural Justice in the conduct of 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.. 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 followed¹⁰

If the Enquiry officer does not comply with the rules of natural Justice, that is to say, 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, the enquiry will be invalid.¹¹

The principles of Natural Justice in its Journey through the centuries, has shed much of its glories and is now crystallized into four principles of Justice, namely:

- (i) Opportunity for both the contesting parties to be heard;
- (ii) Hearing before an impartial tribunal so that no man can be a Judge of his own cause;
- (iii) Decision made in good faith;
- (iv) An orderly course of procedure ¹²

Principles of natural Justice are not codified rules. Their greatest virtue is adaptability to changing situations.

The principle that before a workman can be found guilty for inflicting the punishment of dismissal, he must have been recognized, implicated and named by more than one witness can not be invoked in domestic enquiries or industrial adjudication.

In a domestic enquiries, guilt need not be established beyond reasonable doubt, proof of misconduct may be sufficient. ¹³

Before commencing to record the evidence of the parties, it would be but fair that the enquiry officer should explain to the delinquent employee the charges leveled against him. Legal evidence may be direct evidence or indirect evidence. Direct evidence is what has been defined in S-60 of Evidence Act vis-à-vis oral evidence. As against direct evidence, (SS 60, 62 and 63 of the Evidence Act), there is another type evidence which is known as circumstantial evidence.

Direct evidence as well as circumstantial evidence is legal evidence. In criminal law, hearsay evidence is inadmissible to prove the fact which is deposed to on hearsay. In so far as, domestic enquiry in disciplinary proceedings are concerned, the hearsay evidence may be admissible provided it has reasonable nexus and credibility. ¹⁴

Industrial employers, generally, in their standing orders, or the service rules, may provide the procedure for holding domestic enquiries. If there are any rules regarding holding of domestic enquiries prescribed either by the standing orders, rules or by any

other provision of law, then those standing orders, rules or the law must be followed. A domestic enquiry against a charge-sheeted workman, without complying with the procedure laid down in the standing order would be invalid. ¹⁵

In cases where the standing orders or the service rules do not prescribe any procedure or there are no standing orders or service rules, the domestic enquiry is required to be conducted in compliance with the principles of Natural Justice. ¹⁶

To sum up, we may refer the following requirements of reasonable procedure subject to any special provisions relating to procedure in the relevant rules, Regulations, Standing order or a Statute:

- (a) The employee shall be informed of the exact charges which he is called upon to meet;
- (b) He should be given an opportunity to explain any material relied on by the management to prove the charges;
- (c) The evidence of the management witnesses should be recorded in the presence of the delinquent employee and he should be given an opportunity to cross examine such witnesses;
- (d) The delinquent employee shall either be furnished with copies of the documents relied on by the management or be permitted to have adequate inspection of the documents relied on by the management;
- (e) The delinquent employee should be given the opportunity to produce relevant evidence – both documentally and oral which include the right to examine self and witnesses; and to care for relevant and material documents in the custody of the employer;
- (f) The enquiry officer records his findings with reasons for the same in the Report. ¹⁷

4.2.11 SUPPLY OF RELEVANT MATERIALS : It is settled law that in the charge sheet, specific averments in respect of the charge shall be made. If the management seeks to rely on any document in proof of the charge, the principles of natural Justice require that such copies of those documents need to be supplied to the delinquent. A workman who is to answer to charge must not only know the accusation but also the testimony by which the accusation is supported. ¹⁸

Where the copies of letters marked as Exhibits in the enquiry proceedings are not furnished to the delinquent employee even on demand, it is a serious infringement of the principles of natural Justice.

However, if the enquiry is to be impugned on the ground that the workman was not supplied with any document, it must be clearly stated by the workman as to which particular documents were not supplied which he had asked for and which caused prejudice to his case resulting in injustice. ¹⁹

4.2.12 PRODUCTION OF WITNESSES :

Section 11 (3) (a) of the Industrial Disputes Act empowers the adjudicatory authorities under the Act to compel attendance and examination of witnesses as a Civil Court under the Code of Civil Procedure code. But there is no provision of law, under which the Enquiring officers holding domestic enquiries can compel the attendance of witnesses as under the Codes of Civil Procedure or Criminal Procedure.

The purpose of a domestic enquiry is to find out whether the misconduct alleged against the delinquent workman has in fact been committed by him, before a disciplinary punishment could be inflicted upon him. The Employer has, therefore, to establish by leading oral and documentary evidence before the Enquiry Officer that the misconduct has been committed. Likewise, the workman has to show that he has not committed the alleged act. This he may do either by picking holes in the evidence led by the employer by cross examination or by leading his own evidence to rebut the evidence of the employer. It is open to the parties to summon such evidence, oral or documentary, which they consider necessary, and if, one or the other party, omitted to summon a witness or a

document, the Enquiry Officer cannot be blamed for it, nor is the enquiry rendered defective or unfair on that account.

4.2.13 EXAMINATION OF WITNESSES: The mere form of enquiry would not satisfy the requirements of the rules of natural Justice in industrial law and would not protect the disciplinary action taken by the employers from challenge. The barest requirement of a domestic enquiry is that the charged workman must be given a fair chance to hear the evidence in support of the charge and put such relevant questions by way of cross – examination as he desires and then must be given a chance to rebut the evidence led against him. If the allegations in the charge sheet are denied by the workman, the burden of proving the truth of those allegations will be on the management; and the witnesses called by the Management must be allowed to be cross – examined by the workman and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea.²⁰

The conclusion of an enquiry based on a report given by other employees behind the back of the concerned workman without making them available for cross examination would be vitiated for violation of the rules of Natural justice.²¹

On the question whether adducing evidence before the enquiry officer in a Domestic Enquiry by putting leading questions to a witness in the examination – in – chief would violate the rules of natural Justice, the Madras High Court has taken the view that it would, and the enquiry would not be fair.²² On the other hand, the Calcutta High Court has held that putting leading questions to a witness in the examination in chief would not vitiate the enquiry.²³ As the technicalities and the strict rules of procedure under the Indian Evidence Act do not apply to domestic enquiries, the view of the Calcutta High Court appears to be preferable to the view of the Madras High Court.²⁴

4.2.14 ENQUIRY PENDING CRIMINAL PROCEEDINGS :- The Criminal proceedings and Disciplinary proceedings are altogether distinct and different Jurisdictional areas. In Disciplinary proceedings, the question is whether the delinquent is guilty of such conduct as would merit his discharge or dismissal from service or a lesser punishment, as the case may be, whereas in criminal proceedings the question is whether any offence

criminal law such as Indian Penal Code, Prevention of Corruption Act or any other penal statute is established, and if established, what sentence would be imposed upon him. The conviction in a criminal court requires a higher standard of proof than required in a disciplinary enquiry. The charges leveled in the disciplinary proceedings have to be tested keeping in mind the enforcement of discipline and the level of integrity amongst the staff in the administration of the employer while that is not necessarily a relevant factor to be taken note of in criminal proceedings. In a criminal prosecution, the standard of proof is one of beyond all reasonable doubt while in a domestic enquiry it is one of preponderance of probabilities.²⁵ Therefore, if there is a acquittal in criminal proceedings, the disciplinary proceedings still will not be barred because such proceedings have got an independent angle for testing the charges.

The principles of natural justice do not require that an employer must wait for the result of the criminal trial before taking action against an employee. However, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or malafide.²⁶

4.2.15 ADJOURNMENT AND EX-PARTE PROCEEDINGS:

To grant or refuse adjournments is in the discretion of the Enquiry Officer in the circumstances of a case. The mere fact that the enquiry officer refused to adjourn the case would not vitiate the enquiry. The question whether by refusing adjournment, the Enquiry Officer denied a reasonable opportunity to a party would depend upon the facts and circumstances of each case. The discretion is to be Judicially exercised bearing in mind that a party is not denied reasonable opportunity to present his case in the enquiry.

If it appears that by refusing to adjourn the hearing at the instance of the charge – sheeted workman, the enquiry officer failed to give the said workman a reasonable opportunity to lead evidence, that might, in a proper case, be considered to introduce element of infirmity in the enquiry.²⁷

Industrial adjudication, normally, discourages the practice of workman refusing to participate in domestic enquiries or to withdraw from enquiries without any reasonable ground or taking unreasonable and undesirable attitude. Where a workman refuses to participate in an enquiry or withdraws from the enquiry in the course of the proceedings, it is incumbent on the enquiry officer to complete the enquiry by taking all evidence *exparte* to find out whether or not the charge has been proved. After conclusion of the proceedings, he would submit his report to the disciplinary authority. The disciplinary authority then should communicate a copy of the enquiry Report to the delinquent and seek his explanation. If the workman submits any explanation, the same has to be taken into consideration and then an appropriate order should be passed in accordance with law.²⁸

In case a workman is prevented from participating in a domestic enquiry on account of the conduct of the Management, there is no doubt that the enquiry if held *explarte* will be vitiated for violation of the rules of natural Justice. But if the workman could not participate in the domestic enquiry for reasons for which the management cannot be held responsible, holding the *exparte* enquiry against him may not necessarily be in violation of the rules of Natural Justice.

4.2.16 REPORT OF ENQUIRY OFFICER :

The enquiry report is a document of vital importance in the course of disciplinary proceedings against a delinquent workman. If the enquiry officer finds that the charges revealed against the workman are proved it may result not only in the deprivation of the livelihood but also attaches stigma to the character of the workman. The enquiry report, therefore, should reflect the application of mind by the enquiry officer to the pleadings and the evidence adduced before him by the parties. An enquiry report in a quasi Judicial

enquiry must show the reasons for the conclusions. It cannot be an ipse dixit of the enquiry officer.²⁹

Reasoned order is a desirable condition of Judicial disposal. A speaking order will, at its best, be a reasonable and, at its worst, be at least a plausible one.³⁰

The whole object of holding a domestic enquiry against a delinquent workman is to enable the enquiry officer to decide upon the merits of the dispute before him, and such enquiries must conform to the basic requirements of natural justice and one of the essential requirements of a proceeding of this character is that when the enquiry is over, the officer must consider the evidence and record his conclusion and reasons therefore.³¹

If Industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer.³²

The Enquiry Officer, therefore, after taking the evidence adduced by the parties has to record his findings and conclusions as to whether the misconduct is proved or not which are of vital importance for the adjudication of the dispute arising out of the disciplinary action. It is therefore, essential that the enquiry officer should make a brief report indicating clearly his conclusions and reasons in support thereof. The fact that the Enquiry officer himself is the ultimate punishing authority, cannot help to dispense with the making of the report recording the findings holding the charge-sheeted workman guilty of the charges leveled against him.

A cryptic report, for instance, without stating any reasons will be of little value. It is not necessary that there should be direct evidence. Circumstantial evidence satisfying the test of preponderance of probabilities will be sufficient. One of the tests which the Industrial Tribunal is entitled to apply in dealing with industrial disputes of this character is, whether the conclusions of the enquiry Officer was perverse or whether there was any basis ever in approach adopted by him. In the absence of the findings or conclusions recorded by the Enquiry officer, it would be impossible for the adjudicator to know as to how he approached the question and what conclusions he reached before taking the

disciplinary action against the delinquent workman and it would, therefore, be difficult for the adjudicator to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse.³²

4.2.17 DISCREPANCIES OR PERVERSITY: No doubt the report of the enquiry officer will be vitiated where the enquiry officer acts malafide, i.e. ignores or excludes from consideration a vital and material piece of evidence or takes into consideration any irrelevant or extraneous materials, or where he transgresses the rules of natural justice by being biased against the workman or denies to him a reasonable opportunity to defend himself or where his report is perverse i.e. findings are not supported by any evidence or are entirely opposed to the evidence on record.³³

Perversity vitiates disciplinary proceedings. There is a two-fold test of perversity of a finding. The first test is that the finding is not supported by any legal evidence at all and the second is that on the basis of the material on the record, no reasonable person could have arrived at the finding complained of. In each of these cases, the findings would be treated as perverse.³⁴

4.3.1 ACTION ON ENQUIRY REPORT

Until Article 311 (2) of the Constitution of India was amended by the 42nd Amendment of the Constitution, the disciplinary authority had to issue a show cause notice with respect to the proposed penalty. Thereafter, the concerned Government servant was not being informed of the findings of the enquiry authority in as much as he was not entitled to be furnished with the copy of the Enquiry Report.

Constitutional Provisions:

Article 311 (1) - No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply :-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

- (c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
- (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

By the amendments effected by forty-second Amendment Act, 1976, the proviso to clause (2) has been substituted, with the object of doing away with the second opportunity of making a representation at the stage of imposing penalty, after conclusion of the enquiry.³⁵

This Constitutional provision is not applicable to the Industrial workers. But the principle is applicable to disciplinary proceedings in Industries and other organizations also.

The Supreme Court in *Union of India vs. Mohd. Ramzan Khan* case,³⁶ altered the legal position. The Supreme Court 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”.³⁷

The Enquiry Report and the representation, if any, of the delinquent employee, are to be considered by disciplinary authority. It is incumbent on the disciplinary authority to judiciously consider the findings of the enquiry officer. It is open to such authority to agree or disagree with the findings of the enquiry officer with respect to the charges leveled against the delinquent workman. If the disciplinary authority disagrees with the findings of the Enquiry Officer exonerating the delinquent of the charges leveled against him, the rules of natural justice will require that it should record its reasons for its disagreement.³⁸

When there is disagreement between the Enquiry Officer and the Disciplinary Authority and the Enquiry Officer has exonerated the charged employee, the Disciplinary Authority is not only bound to furnish a copy of the report, but also inform the employee about the tentative conclusion about his guilt and also to give representations against such conclusion.³⁹

4.3.2 PUNISHMENT – Imposing punishment is the last stage in the disciplinary proceedings against a delinquent workman. This stage commences after the Disciplinary Authority has received the report of the Enquiry Officer, a copy of the report served upon the delinquent employee asking his representation and has received the representation, if any. Upon considering the gravity of the misconduct and the extenuating circumstances, if any, and also any other factor that may be relevant in the facts and circumstances of the case, the disciplinary authority has to decide the quantum of punishment that may be imposed on the delinquent.

Broadly, in the area of Industrial law, the punishments which an employer can impose, as a measure of a disciplinary action for an act of misconduct, on a workman are: (i) Warning (ii) fine (iii) withholding of increment (iv) Demotion (v) Suspension (vi) Discharge and (vii) Dismissal from service.

The punishment must be commensurate with the gravity of the act of misconduct proved against the delinquent workman.⁴⁰

4.3.3 LEGALE EFFECT OF ENQUIRY REPORT

In the disciplinary proceedings, the true legal position in regard to the findings recorded by an Enquiry Officer and the legal effect of his report may be summed up as follows:-

- (i) The Enquiry Officer holds the Enquiry against the delinquent as a delegate of the employer.
- (ii) The object of the Enquiry by an enquiry officer is to enable the employer to hold an investigation into the charges framed against a delinquent, so that the employer can, in due course consider the evidence adduced and decide whether the said charges are proved or not.

- (iii) “The findings on the merit” recorded by the Enquiry officer are intended merely to supply appropriate material for the consideration of the employer. Neither the findings nor the recommendations are binding on the Employer.

- (iv) The Enquiry report alongwith the evidence recorded by the Enquiry officer constitutes the material on which the Employer has ultimately to act. That is the only purpose of the enquiry and the report which the enquiry officer makes as a result thereof.⁴¹

4.4 OBSERVATION

The Domestic Enquiry as a fact finding forum plays a crucial role in the Industrial Relations System. In the changed scenario towards market economy, the employer may victimize the employee in the guise of disciplinary action.

The First National Commission on labour in its Report noted the dissatisfaction of the workers as follows:-

“Their basic dissatisfaction is, however, about the employer combining in himself the functions of a prosecutor and judge. The claim made by employer that this is not always so is accepted by unions only to a limited extent and that too in the case of progressive management. Some of the suggested changes are:

- (i) Standardisation of punishment for different types of misconduct.
- (ii) Inclusion of a worker's representative in the Domestic Enquiry Committee.
- (iii) Having an arbitrator to give decision in a Domestic Enquiry,
- (iv) An adequate show-cause opportunity to a workman.
- (v) Presence of a union official to represent the case of a workman in the enquiry proceeding.
- (vi) Supply of the record of proceedings to the aggrieved workman.
- (vii) Payment of a subsistence allowance during the suspension period.
- (viii) Right of appeal to administrative tribunals set up for the purpose. and
- (ix) Fixing time limit for tribunal proceedings and giving unfettered powers to it to examine the case *de novo*, modify or cancel a punishment order by the employer.⁴²

While analysing the present practice and procedure, it has been observed that the existing laws are not without lapses. The employer may utilize it as a mere formality to punish the unwanted employee and the delay-dailying adjudicating machinery with all its lacunas may cause irreparable injustice to the employees. On the other hand, the institution of

Domestic Enquiry has the potency to emerge out as an unparalleled effective machinery in developing and maintaining industrial harmony.

If this institution is able to create confidence and faith in both the partners i.e. employer and employee, Domestic Enquiry can play the role of Alternative Disputes Redressal system to settle the grievances arises in industrial relations. There is scope to equip the institution to deliver a new era in the Industrial Jurisprudence. The institution has the potential to cross its traditional role i.e. to enquire the alleged misconduct against the employee.

Now, we may proceed to evaluate the Domestic Enquiry System as practiced in the industries of the Asansol – Durgapur Region and to appreciate the outcome of an extensive Opinion Poll conducted on a varied cross - sections of the society on the issues involved in this research.

4.5 REFERENCES

1. State of Punjab v. Ram Singh, ex- constable, 1992, AIR SCW, 2595
Firestone Tyre & Rubber Co. v. workman, 1967, II, LLJ 715 SC
 2. Katju, Markandey – Domestic Enquiry, - 1st ed. 1975, N.M. Tripathi pvt Ltd.,
Bombay, page 47.
 3. Ramanathan. S– Misconduct, Disciplinary proceedings and Punishment-Lab. I. C.
1992, Jour. 1
 4. Sur enamel and Stamping works vs workman, AIR 1963 SC 1914.
 5. Bata Shoe Co. pvt. Ltd. v. Ganguly, 1961-1-LLJ, 303, SC.
 6. Brown & Co. Ltd. vs workman, 1959-1-LLJ – 450-SC
 7. Katju, Markandev (Supra) Page 22.
 8. Board of Tretees of the Port of Bombay v. Dilip Kumar Raghavendranth
Nodkarni [1983] 1 L.L.J. 1(4) (S.C.)
- Pett v. Greyhound racing Association Ltd., [1968] 2 All E.R. 545 (549) (CA)
- Kesoram cotton Mills Ltd. v. Gangadhar [1963] 11 L.L. J. 371, S.C.
- Associated Cement Companies Ltd. v. workmen, [1963] 11, L.L. J. 396 (401)
S.C.

Director General of Post and Telegraph v. N. G. Majumdar [1974] 11, L.L. J. 44(Cal) (D.B.)

Bharat Electronics Ltd. v. K. Kasi. [1987] 11, L.L. J. 203 (Kant).

9. Central Bank of India v. Prakash Chand Jain, (1969) 11 L.L. J. 377 (382) S.C.
 J.D. Jain v. Management of State Bank of India, (1982) 1 L.L.J. 54(58) S.C.
 Workman, Indian airlines corporation v. Union of India, [1984] Lab I.C. (Noc) 123 (Cal)
10. Union of India v. T.R. Verma (1958) 11 L.L.J. 259 (264) S.C.
11. Workmen of Motipur Sugar Factory v. Motipur Sugar Factory(P) Ltd. (1965) 11 LLJ 162 (S.C.)

 J.K. Iron and Steel Co. Ltd. v. Iron & Steel Mazdoor Union, (1956) 1 L.L.J. 227 (S.C.)

 Mayur Mills Ltd. v. Suti Mills Mazdoor Union, (1955) 1 L.L.J. 1(S.C.)
 Development Credit Bank Ltd v. Azim A. Charania, 2000 Lab I.C. 2757 Bombay
 I.P. Maheswari v. Delhi administration AIR 1984 SC 153.
12. Manager, Boisahabi Tea estate v. Presiding officer, Labour Court, Dibrugarh, 1981 Lab I.C. 557 Gau. (D.B.)
13. J.D. Jain v. Management of State Bank of India, 1982 1 L.L.J. 54 (58) S.C.
14. State of Haryana v. Rattar Singh, (1982) 1 L.L.J. 46 (S.C.)
 Management of State Bank of India v. J.D. Jain (1979) Lab. I.C. 1041 (Delhi) (D.B.) affirmed by the Supreme Court in appeal in J.D. Jain v. Management of State Bank of India (1982) 1 L.L.J. 54 S.C.

15. Imperial Tobacco Co. of India Ltd. vs. workmen, (1961) 11 L.L.J. 414 (S.C.)
16. Central Bank of India Ltd. vs. Karunamoy Banerjee (1967) 11 L.L.J 739 (S.C.)
17. G.R. Venkateshware Reddy vs. Karnataka State Road Transport Corporation (1995)1 L.L.J 1011(1020) (Kant)
 Sur enamel S.W. Ltd. vs. Its workmen AIR 19 63 SC 1914
 Ramesh Chandra Mangalik v. State of U.P. and others 2000Lab I.C. 3107 (S.C)
 State of U.P. v. S Lal. AIR 1998 S.C.3038
18. Meenglass Tea Estate vs. workmen, 1963 11, L.L.J, 392 (S.C.)
19. Kesoram Cotton Mills Ltd. vs. Gangadhar, (1963) 11 L.L.J. 371 (380) (S.C.)
20. Tata engineering and Locomotive Co. Ltd. vs. S.C. Prasad, (1969) 11 L.L.J. 799 (S.C.)
21. State of Mysore v-Shivabassapa Shivappa, (1964) 1 L.L.J. 24. S.C.
 Sur Enamel and Stamping Worker Ltd v. Their workmen, (1963) 11 L.L.J. 367 (S.C)
22. Peirce Leslie & Co. Ltd v. Labour Court , (1963) 1 L.L.J 797 (Mad)
23. Howrah Trading Co (p) Ltd V. Fourth Industrial Tribunal (1966) 11 L.L.J. 282 (Cal), Statesman (P) Ltd. v. H.R. Deb. (1962) 1 L.L.J. 733 (Cal)
24. Malhotra , O.P. – The Law of Industrial Disputes, 5th Ed., Vol-2, Universal Law Publishing Co. Pvt. Ltd. Delhi, Page – 998.
25. Kusheshwar Dubey v. Bharat Cooking Coal Ltd. (1998) II L.L.J. 470 (472-73) S.C.
 Union of India v. Sardar Bahadur 1972 Lab I.C. 627S.C.
 Bharat Cooking Coal Ltd. v. Bibhuti Kumar Singh (1995) 11 L.L.J. 633 (S.C.)

26. Delhi Cloth & General Mills Ltd. v. Kushal bhan (1960) I L.L.J. 520 (SC)
Tata Oil Mills Co. Ltd. v. Workmen, (1964) II, L.L.J. 113 (S.C.)
27. J.K. Cotton Spinning Weaving Co. Ltd. v. Workmen (1965) II L.L.J. 153 (S.C.)
Delhi Cloth & General Mills Co. Ltd. v. T. Singh (1972) I L.L.J. 201 (S.C.)
Management of Eastern Electric and Trading Co. v. Baldev Lal (1975) II L.L.J. 367 (S.C.)
28. State of UP V. T. P. Lal Srivastava, (1997) I L.L.J. , 831 (SC)
Imperial Tobacco Co. of India Ltd. v. workmen (1961) II L.L.J. 414 (S.C.)
Laxmi Devi Suger Mills Ltd. vs. Ramsarup (1957) I LLJ 17 (S.C.)
Management of Eastern Electric Trading Co. vs. Baldev Lal (1975) II LLJ 367 (S.C.)
29. Anil Kumar vs. The Presiding Officer, Labour Court, Punjab, (1986) I LLJ 101 (103) (S.C.)
30. Madhya Pradesh Industries Ltd. vs. Union of India, (1966) I S.C.R. 466.
31. Khardan & Co. Ltd. vs. its workmen (1963) II LLJ 452 (S.C.)
Powari Tea Estate vs. M.K. Barkataki (1965) II LLJ 102 (S.C.)
32. Central Bank of India Ltd. vs. Prakash Chand Jain (1969) II L.L.J. 377 (S.C.)
33. Management of Imperial Book Depot vs. Ved Prakash Aggrarwal (1969) Lab I.C. 120 (Delhi)
Tata Engineering and Locomotive Co. Ltd. vs. S.C. Prasad (1969) II L.L.J. 799 (S.C.)
34. Central Bank of India Ltd. vs. Prakash Chand Jain (1969) II L.L.J. 377 (S.C.)
Parry & Co. Ltd. vs. P.C. Pal, (1970) II L.L.J. 429 (S.C.)
- Dharangadhra Chemical works Ltd. vs. State of Saurashtra (1957) II L.L.J. 477
Banaras Electric Light and Power Co. Ltd. vs. Labour Court , (1972) II L.L.J. 328 (S.C.)
- Bharat Iron works V. Bhagubhai Balubhai Patal Parry Co. Ltd. V. P. C. Pal, (1970) II L.L.J. 429. S.C.

Dharangadhra Chemical Works Ltd. V. State of Saurashtra (1957) I L.L.J. 477

Banaras Electric Light and Power Co. Ltd. V. Labour Court, (1972) II L. L. J. 328
S.C.

35. Union of India v. Tulsiram AIR 1985 S.C. 1416
36. AIR 1991 S.C. 471
37. Managing Director, ECIL v. B. Kalunakar AIR 1994 S.C. 1077
State of Karnataka v. V.B. Hiragoudar, (1997) II L.L.J. 921 S.C.
38. Tarachand v. Delhi Municipality, AIR 1977 S.C. 567
Mahaveer Prasad v. State of U.P. AIR 1970 S.C. 1302
Ram Kishore v. Union of India, (1996) I L.L.J. 982 S.C.
39. P.S. LAL v. U.O.I. (1993) 23 ATC 726
State of Assam v. Bimal Kr. Pandit, AIR 1969 S. C. 1612.
40. Bengal Bhatdee Coal Co. v. Ram Prakash Singh (1963) II L.L.J. 291, S.C.
Hind Construction and Engineering Co. Ltd. v. Workmen, (1965) I L.L.J. 462
(S.C.)
Management of Federation Indian Chambers of Cammerce and Industry v. R.K.
Mittal, 1971 II, L.L.J., 630 (S.C.)
41. Union of India v. H.C. Goel, AIR 1964 S.C. 364
A.N. D'Silva V. Union of India, AIR 1962 S.C. 1130.
42. Report of Ist National Commission on Labour, 1969 Page- 350