Domestic Enquiries in Industrial Adjudication

Introduction

Disciplining a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity. Accordingly, the Supreme Court of India ("SC") in Hombe Gowda Educational Trust v. State of Karnataka,1 stated that giving managers the power to punish a workman according to law, even if the punishment may result in some hardship is important. But, one needs to bear in mind that conducting disciplinary proceedings against a workman is most controversial and often lead to long drawn-out cases. Hence, the management of any industrial establishment must cautiously approach such proceedings and strictly follow the procedure laid down by judicial precedents.

The present bulletin focuses on the requirements of holding a domestic enquiry with respect to indiscipline on part of a workman, the procedure to be followed thereunder and the impact of section 11-A of the Industrial Disputes Act, 1947 ("the Act") on domestic enquiries.

1. Definition of misconduct

Even though the term “misconduct” is not defined under any legislation governing labour laws in India, the SC in State of Punjab v. Ram Singh Ex. Constable,2 held that misconduct can involve moral turpitude, improper or wrongful behavior, willful incharacter, doing a forbidden act, or transgression of well established rules of action or code of conduct. But, SC further stated that misconduct cannot include a mere error of judgment, carelessness or negligence in performance of duty.

Moreover, the central government has prescribed Model Standing Orders,3 which provides the following instances to constitute misconduct:4 (a) willful insubordination or disobedience of any lawful and reasonable order of a superior; (b) theft, fraud or dishonesty of the employers business or property; (c) willful damage or loss to employers goods or property; (d) taking or giving bribes; (e) habitual breach of any law applicable to the industrial establishment; (f) riotous or disorderly behavior during working hours at the industrial establishment; (g) habitual negligence or neglect of work; (h) repetition of any act or omission for which fine may be imposed to a maximum of 2% of the monthly wages; (i) striking work or inciting others to strike work in contravention of the provision of any law; and (j) sexual harassment. As is evident from the language used, the instances cited above are illustrative and not exhaustive. Where the state government has not prescribed standing

---

1 2006 (1) SCC 430
2 AIR 1992 SC 2188
3 “Standing Orders” are rules of conduct for the workmen employed in an industrial establishment. The Industrial Employment (Standing Orders) Act, 1946 requires employers of all industrial establishments to formally define the conditions of employment under them.
4 Clause 14(3), Schedule I of the Industrial Employment Standing Orders Central Rules, 1946
orders, the categorization of an act or omission as misconduct will depend on the facts and circumstances of the case. However, to construe an act or omission as misconduct it should have a rational connection with the employment of the workman and the relationship with his employer.

2. **Procedure for disciplining a workman**

The procedure for carrying out disciplinary action has not been prescribed under any statute or notification and has been evolved through practice and judicial precedents. In *Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen*, the SC in an attempt to lay down the procedure for conducting an enquiry for industrial adjudication provided that: (a) the workman proceeded against must be informed clearly of the charges leveled against him; (b) the witnesses must be examined in the presence of the workman; (c) the workman must be given a fair opportunity to cross-examine the witnesses including himself if he so wishes; and (d) the Enquiry Officer (“Officer”) must record his findings with reasons in his report.

In addition to the above rudimentary principles of equity, the management of the industrial establishment must also satisfy the principles of natural justice and non-discrimination towards the workman. Keeping this in mind, the following steps for conducting an enquiry against a workman need to be followed:

2.1 **Preliminary enquiry:** When an act of misconduct has been committed and the Disciplinary Authority (“Authority”) receives a complaint, it may conduct a preliminary enquiry. This enquiry is conducted before the charges are framed and is not part of a domestic enquiry. At this stage the management carries out investigations prior to launching enquiries against the workman, and determines whether there is sufficient material evidence to initiate domestic enquiry. The law with respect to preliminary investigation is, if the employer makes the enquiry it is not incumbent upon him to call for the explanation of the workman before serving the charge-sheet, since it may be used as a ploy for dishing out the defence of the workman. However, it is pertinent to note that the evidence recorded in a preliminary enquiry cannot be used in domestic enquiry because the workman has not had the opportunity to defend himself against such evidence. Upon conclusion of the preliminary enquiry, if the workman is found innocent, the employer need not undergo the following procedure. In such cases, the employer is only required to issue a show cause notice to the workman. However, if the workman is found guilty, the management has to hold a proper enquiry before dismissing him, which can be initiated only by supplying him with a charge-sheet.

---

5 AIR 1963 SC 1914
6 An Officer is an agent of the Authority who conducts the enquiry against the delinquent workman
7 The Authority conducts the preliminary enquiry of an alleged act of misconduct by a workman. It is generally constituted of (a) workers representative, such as member of the trade union, (b) employers representative, such as the head of the department where the workman was employed and (c) and independent Officer
8 A domestic inquiry is an internal hearing held by an employer to ascertain whether a workman is guilty of misconduct. It is conducted by administrative officers appointed by the employer for offences committed against the establishment for misconduct
2.2 **Charge-sheet:** Domestic enquiry commences once a charge-sheet is issued to the workman. A charge-sheet essentially contains detailed particulars of the misconduct, specific charges against the workman and the relevant clauses of the Standing Order under which the workman is liable to be punished. It is pertinent to note that the charge-sheet is to be sent by the employer to the workman by registered post and in case it is returned un-served, the employer must get the charges published in the local newspaper in the regional language understood by the workman.

2.3 **Explanation:** Pursuant to service of the charge-sheet, the workman must be given an opportunity to submit an explanation to the Officer with respect to the alleged act or omission leading to misconduct. Accordingly, he must be granted reasonable time towards submitting the explanation and the enquiry must not be concluded unless this time period has expired. It is pertinent to note that there are no defined parameters of what constitutes “reasonable time period,” and it depends on the facts and circumstances of each case, nature of charges, nature of proposed action, etc.

2.4 **Enquiry report:** Once the employer and the workman have been heard, the Officer is required to prepare a reasoned enquiry report and submit it with the Authority. This enquiry report must also be supplied to the workman upon conclusion of the enquiry. Since the Officer’s may not be well acquainted with the law, minor discrepancies in the report which have no bearing on the decision may well be overlooked by the judiciary.

The Authority finally decides the matter and the penalty to be imposed, in case it agrees with the findings of the Officer. If the Authority does not agree with the findings it records its own findings based on the evidence on record. While doing so, if the Authority does not agree with the Officer’s finding that the accused workman is not guilty, it may afford another opportunity to the workman to defend himself. However, once the Authority decides to impose punishment, it must be communicated to the workman at the earliest.

The decision of the Authority is appealable, provided the Standing Orders allow the appellate Authority created by the management to hear the matter again. The decision of the appellate Authority was final and binding upon the parties, and the domestic enquiry would be deemed concluded. However, this position has changed since the inception of section 11-A in the Act.⁹

3. **Impact of section 11-A of the Act**

The significance of domestic enquiries has reduced due to the introduction of section 11-A in the Act and the finding of the SC in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management*,¹⁰ wherein it was held that even if no enquiry or defective enquiry had been conducted by the management of the industrial establishment, the parties can adduce evidence before the Industrial Tribunal (“Tribunal”) to prove their stand. Thus, before section 11-A was introduced and a valid enquiry was conducted, the Tribunal could only interfere with the decision of the management on the following four

---

⁹ Section 11-A of the Act came into effect from December 15, 1971

¹⁰ AIR 1973 SC 1227
grounds: (a) want of good faith; (b) unfair labour practice; (c) violation of principles of natural justice by the management; and (d) the finding is not based on the material evidence. However, post the amendment, the jurisdiction of the Tribunal/Labour Court can interfere with the decision of the Authority, even if the enquiry is conducted on the principles of natural justice. Therefore, in case of both, valid enquiry following the principles of natural justice or no enquiry being conducted, the Tribunal/Labour Court is empowered to set-aside the decision of the management or modify the punishment awarded to the workman. This in turn means that the amendment has granted the Tribunal/Labour Court extensive power which might be misused.

If the employer or the workman is not satisfied with the decision of the Tribunal/Labour Court, they may further appeal before a high court by invoking writ jurisdiction.

**Conclusion**

Under the present system an Officer does not inspire the confidence of the delinquent workman as the charge-sheet is given by the employer and the Officer is also appointed by the employer. This frustrates the very essence of natural justice. Therefore, the law should provide a panel of Officers consisting of retired judges and labour law practitioners. They should be empowered with quasi-judicial powers while holding enquiries. Accordingly, due weightage will be given to the findings of such Officers and the number of industrial disputes will reduce.

Further, due to the extensive power of the interference of the Tribunal/Labour Court under section 11-A of the Act followed by an appeal before the high court, the significance of holding a valid domestic enquiry is overlooked in industries. The rationale is that the industry is averse to get involved with cumbersome procedures when the Tribunal/Labour Court is fully empowered to re-examine the case on merits. This undermines the entire process of industrial adjudication. Towards maintaining balance, if a valid enquiry is held, misconduct is proved and accordingly punishment is imposed, then the Tribunal/Labour Court should decline to interfere with the decision. Such a shifting of some degree of control back into the hands of the management will greatly help the cause of industrial discipline in India.

**Authored by:**
Rohan Jhusiwala