



THE FOUR P'S OF DOMESTIC ENQUIRY

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Introduction

Even though human resources are accorded strategic importance along with other functional areas in the overall corporate strategy, they are the greatest assets for any organization. If organization is to be competitive and economically sustainable in the long-run, it is not just enough for them for simply employing and paying the people. The attitude, conduct and behavior of employees are considered for the smooth running of an organization. Similarly for the maintenance of industrial peace which is the very foundation of industrial democracy, without discipline no enterprise would prosper. Indiscipline gives rise to strikes like, go-slows, pen down, tool down, wild cat strike, absenteeism, leading to loss of production, profits and wages. There is no hard and fast rule to deal with indiscipline. When individual goals eclipse organizational goals or when equilibriums between the capacity, the interests and opportunity for an individual is destroyed, the disharmony results in conflict and frustrations. These may be realized by sublimation or aggressive attitudes towards management.

Domestic Inquiry is an internal inquiry into some alleged misconduct by an employee. The main objectives of the domestic inquiry are to establish whether the employee is guilty on the allegation. With the growing importance of the basic tenets of human rights and equality and fairness for all, law has made it necessary for an employer to work in a just and fair manner towards its workers knowing that it is the weaker party in industrial relations. These enquiries mainly give an opportunity to the worker to explain himself and defend himself from arbitrary punishment if his is innocent. Further the law mandates that such disciplinary proceedings are very crucial for a worker who has his livelihood and dignity at stake. Thus it is expected of employers to carry out these enquiries in accordance with the principles of natural justice. However, there exists a big controversy here as to the right of a worker to be represented by an advocate at such enquiries to ensure smooth and efficacious running of such enquiry. One needs to see whether such a right is a basic essential of natural justice or whether such a right would only take away the informal atmosphere of a domestic enquiry. In order to answer these questions the researcher will take the held of various judicial pronouncements and other legal dimensions. Most of Labour Law is judge made law. The Law relating to domestic enquiry particularly, is mostly judge made. This is further argued by the fact that there is no statutory provision which lays down that an enquiry must be held before punishment for misconduct, that principles of natural



justice must be followed in such enquiries, that the tribunal can't interfere with the findings of the enquiry officer, etc.

The Purpose

The term domestic enquiry is mainly used to refer to an enquiry into the charges of indiscipline and misconduct by an employee. In common parlance, domestic enquiry means departmental enquiry or domestic tribunal. In such enquiries, the matter is decided by administrative officers and not by courts of law. In cases of alleged indiscipline, it is common for disciplinary authorities in a department or in an industry to appoint an officer or officers to inquire into the allegations against an employee. These enquiries are commonly known as 'Domestic Enquiries'. It is commonly used in connection with an enquiry against industrial or commercial workers. But there is no hard and fast rule for use of these terms. Still there are essential differences between the enquiries into the charges against the industrial workers and Govt. Servants. An enquiry held by the management against its employees for certain acts of alleged misconduct is called a "Domestic enquiry". Domestic enquiry is when such fact-finding enquiries are conducted in factories, industrial establishments etc, of a public and private sector. Today it has become the law that no punishment for misconduct can be given to an employee without first of all, proving that act and secondly, without giving him a reasonable opportunity to defend himself in a proper domestic enquiry.

The Principles

The purpose and importance of such an enquiry is that in an age of economic growth and liberalization, society requires industrial peace so that production may not be hampered. By providing for such an enquiry a great deal of arbitrariness and consequential grievance and unrest is avoided. Following this reasoning, enquiries against temporary workmen must also be held giving him opportunity to defend himself and cross-examining the witnesses of the employer, before he is punished.

A domestic enquiry is different from a preliminary enquiry. The sole object of a preliminary enquiry is to find out whether a prima facie case has been made out against the worker or not. On the other hand, a domestic enquiry is concerned with determining whether charges leveled against the workers are established or not. Further, the report of preliminary enquiry serves the basis of framing charges against the worker, while in the case of a domestic enquiry; the report helps determine the nature of punishment to be inflicted upon the workman who is found guilty. Lastly, the preliminary enquiry need not confer to any rules and principles, whereas a domestic enquiry is subject to the principles of natural justice and the procedure laid down by the courts in their judicial decisions.

The Procedure

All establishments whether they have Standing or Orders or they follow the Model Standing Orders must necessarily follow certain procedural formalities before



any punishment is awarded. This is laid down in clause 25 of the Model Standing orders. Apart from this since there is no set law as regards disciplinary proceedings, most procedures have been deduced from various legal judgments. The procedure can be divided into 5 steps. Viz., Framing and issuing of a charge sheet; Enquiry proceedings; Findings; Decision; and Service of the Order.

The inquiry panel shall consist of chairman and panel members, who are Similar or higher level than the accused, No personal involvement in such case, Should not have participated in the investigation of the matter, Could be an outsider engaged for a fee and preferably not the HOD of the accused. There must also be a prosecuting officer / investigating officer, who should not brief the panel members on the background of the accused, Should not inform the panel members the name of the accused and the charge(s) before the commencement of the inquiry, it should not influence the panel's decision.

When the management comes to know that a particular act of misconduct has been committed by an employee, they should hold a preliminary enquiry into the matter. Such an enquiry may be termed as Fact-Finding Enquiry. Charge Sheet is not an accusation made or information given in abstract but an accusation made against a person in respect an act committed or omitted in violation. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. The employer cannot justify his action on any grounds other than those contained in the charge sheet. The charge sheet must clearly set forth the charge and ask the delinquent to submit his explanation within a reasonable time, i.e. within 24 or 48 hours depending on the gravity of the misconduct. The charge sheet should mention the misconduct committed, the date and time of its commission and the relevant section of the Standing orders under which the misconduct falls.

The Plan

The charge should be specific and clear and never vague, Incidental matters not connected with the charge and or irrelevant should be omitted from the charge. Where an employee is to be suspended prior to holding of enquiry it would not be proper to mention in the charge sheet that "Considering the gravity of the misconduct, you are suspended from pay and duty". It would be appropriate to mention "pending enquiry into the charge framed against you, you are suspended from pay and duty". At no stage before the issue of final orders there should be any indication that management has pre-determined the outcome of the case. If the disciplinary authority is likely to be a witness in support of the charge, it would be preferable for some other officer of the company to sign the charge sheet. In case he happens to be a witness he should never conduct the enquiry. The charge sheet is usually served to the delinquent in the office time in the presence of a witness. If he refused to receive the same, it may be exhibited in the notice-board of the establishment.

Generally Enquiry means (a) Hearing of the Case (b) Recording Evidence (c) Admitting Documents and (d) General completion of the records upon which a



finding would be based on evidence. In the legal sense General Aspect of evidence is consists principally of oral testimony or witnesses, written documents and various other subjects perceptible by the senses. Proof is the process of adducing evidence before a judicial body. The purpose of the proof is to aid the tribunal in finding the facts. The Important Aspects is the correct method of appreciating and assessing the evidence of a witness is by scrutinizing the evidence on its merits and it is only when a doubt arises whether the witness is in fact deposing to the truth or not, that the necessity would arise to investigate into the possible reasons for his conduct and what would have motivated the same, such as intimate interest in the person on whose behalf he had come to give evidence, or strong enmity against whom he had come to give evidence.

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

Conclusion

For the smooth functioning of an industry, the defined codes of discipline, contracts of service by awards, agreements and standing orders must be adhered to. In the event of an employee not complying with these codes of conduct, he is liable to face disciplinary actions initiated by the Management according to the Standing Order. Domestic enquiry is similar to a trial in a court of law, but while a trial in a court is for crimes done against society, domestic enquiry is conducted for offences committed against the establishment for misconduct, punishable under the standing orders/rules and regulations of the organization.

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