



**Research Article**

**THE CONCEPT OF DOMESTIC ENQUIRY IN MAINTAINING INDUSTRIAL DISCIPLINE – A CRITICAL ANALYSIS**

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**ABSTRACT**

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. It is similar to a trial in a court of law, but while a trial in a court is of crimes done against society, domestic enquiry is conducted for offences committed against the establishment for misconduct, punishable under the standing orders and regulations of the organization. The concept of 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. This entire system has been primarily made to protect the interests and rights of the workers in the age of rising industrial disputes.

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**INTRODUCTION**

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. This procedure is called domestic enquiry and it is conducted in accordance with the standing order/agreements.

**Domestic Enquiry**

Domestic enquiry is clearly based on the principles of natural justice and fair play. Today ‘Domestic enquiry’, occupies a very important position in industrial law. Domestic enquiry essentially means an enquiry into the charges of indiscipline and misconduct framed against a workman or an employee and the term ‘Domestic’ clearly suggest that it is a purely internal matter between an employer and his employees. This, it is of utmost importance for the employers to carry out the enquires in accordance with the principles of natural justice.

Domestic enquiry and its effect in section 11 of Industrial disputes act,1947 gives power to the Labour court or tribunal to differ both on a finding of misconduct arrived at by the enquiry officer/employer as well as the punishment imposed on the workmen as a result of the misconduct provided in such a domestic enquiry.

**Procedure of Domestic Enquiry**

When the management comes to know that a particular act of misconduct has been committed by an employee, they should hold a preliminary enquiry into the matter. such an enquiry may be termed as fact finding enquiry.

The charge sheet must be signed by a competent authority. Usually, such a competent authority is the disciplinary authority who is also authorized to inflict punishment. The charge sheet should be drafted very carefully and served properly. It is important that the charge sheet contains the following details,

1. Name of the person charged
2. Employee number
3. Address
4. Date, Time and Place of occurrence
5. Narration of the misconduct alleged
6. Relevant clause and specific act of misconduct under the standing orders/settlement.
7. calling for an explanation within a stipulated time.
8. if the charge rests on a written report, a copy of that report to be enclosed.

The charge should be specific and clear and never vague, incidental matters not connected with charge and or irrelevant should be omitted from the charge.

**Report by Enquiry Officer**

The enquiry officer should elicit information on all material points. Wherein an enquiry, a witness gives evidence on material points to corroborate the testimony of complainant about his hearing the conversation between the complainant

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and the delinquent worker, it is essential that the distance between the witness and the place of occurrence is also ascertained to find out if the witness could have really heard it. Even if this point is not brought out by the respective parties at the enquiry and submit his findings to the disciplinary authority as expeditiously as possible.

#### **Role of Management and Employee in Enquiry**

Generally, where the misconducts are serious, the company appoints an outside enquiry officer, who has the experience of conducting domestic enquires. While the domestic enquiry may be conducted by an enquiry officer, who is generally a legal professional or a person who is experienced in conducting domestic enquires, the charge sheeted worker has the right to bring a co-worker or a union office bearer to defend him in the enquiry. Where the enquiry returns the verdict of guilty and the employee is dismissed, the departmental enquiry conducted against the employee is challenged or the punishment imposed is challenged as being disproportionate by the dismissed employee by raising an industrial dispute.

#### **Application of Natural Justice in Disciplinary Proceedings**

The principles of natural justice are not recognized as fundamental rights under the constitution of India. since the term 'national justice' is vague, it implies a number of other requirements, observance of which is essential if one has to comply with the principles of natural justice.

#### **Punishment**

Punishment should be commensurate with the gravity of the charge. If lesser punishment could be inflicted without jeopardizing the interest of the administration, the employer should not inflict the maximum punishment because it can prove counter-productive. The idea of punishment also, by its very nature of things, includes within its sphere, attempts and efforts to improve conduct of the offender. This is what appears to be the true ethics of punishment in industrial establishment if worked in the right spirit and direction it is sure that it will go a long way in easing unrest between the employee and the employer.

#### **CONCLUSION**

There are so many instances or to put it differently, it is the new trend, to appoint an enquiry officer, who is well acquainted with the employers so that the decision passed him can be in favor of the employers. This is a very sad situation because the poor workman, who bestows faith in this justice system doesn't realize he is subject to trickery.

Due to his lack of intellect and understanding of the workings of the system, the workman is adjudged guilty. Though laws are pro labour and it is difficult to take disciplinary action against any workman but it does not mean that a sense of despair should prevail in our minds with regard to disciplinary matters.

If a domestic enquiry is fairly and properly held without any prejudice or bias after following the principal of natural justice, and the management had not acted with malice or prejudice while deciding about the quantum of punishment, there is no reason why management's decision, if challenged, should be reversed by the tribunal. Therefore, the employer should give proper attention to this aspect of the disciplinary action so that pit falls on this could be avoided.

#### **Suggestions**

Domestic enquiry system which promises to safeguard the rights of the workers has taken away the rights more than protecting it. if domestic enquiry functions as it ought to then it shall only be a boon for the workman and the society at large.

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 weight-age will be given to the findings of such officers and the number of industrial disputes will reduce.

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