

Procedure to have a Domestic Enquiry – IV **Representation by Management & Essentials of being an** **Enquiry Officer under Domestic Enquiry**

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Representation by the Management:

The Management conducts enquiry and pleads the case in favour of Management, thereby they play dual role in Domestic Enquiry.

Such Representative has full responsibility and cannot suppress any facts or materials before the enquiry officer.

Management Representative can plead the case as it is and they cannot produce any evidence which may or may not work against them. They must be fully knowledgeable about the case and its circumstances. Such Representative shall have expertise in appearing before the enquiry, cross examining the delinquent employee, witness etc.

Documental Evidence:

Where the charge-sheeted employee is in requirement of certain documents in the possession of Management, which can be used to his/her defence, it shall be the duty of the Employer to share the same before the Enquiry Officer.

All such records which made a Prima-Facie case against the Delinquent employee shall be disclosed. There is no requirement to disclose those documents which does not have an evidentiary value.

Where production of documental evidence is not possible, Inspection of such documents shall be allowed.

Essential qualities of an Enquiry Officer

An Enquiry Officer, whether a Management Employee or an External officer, shall be unbiased and ensure Principle's of Natural Justice throughout the enquiry.

Natural Justice recognizes three principles

1. Nemo Debet Essc judex in Propria Causa (nobody shall be a Judge in his own cause or a cause which he is interested)
2. Audi Alterem Partem (To hear the other side)
3. Speaking Orders or Reasoned Decisions

Natural Justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

1. Nemo Debet Essc Judex in Propria Causa

The Principle is more popularly known as the Doctrine of Bias. That the authority sitting in Judgment should be impartial and act without bias. To instill confidence in the system. Types of Bias :

- ▶▶ Pecuniary Bias
- ▶▶ Personal Bias
- ▶▶ Official Bias

2. Audi Alterem Partem

It is necessary for providing a fair hearing.

“He who shall decide anything without the other side having been hear, although he may have said what is right, will not have been what is right” or in other words “Justice should not only be done but should manifestly be seen to be done”

3. Issuance of Speaking Orders or Reasoned Decision

It is now universally recognized that giving reasons for a certain decision is one of the fundamentals of good administration and safeguard against arbitrariness.

Conclusion on the Enquiry

Where the delinquent employee could not put up strong defence the Enquiry Officer should not consider the charges are deemed to be proved.

The Onus of proving the Guilt is on the Management.

The case shall be judged on the merits and not only on the documental evidence, where delinquent employee cannot be able to prove against it. The Enquiry Officer shall be extra careful in judging the witness deposition of either party. Besides the delinquent employee may be supported with workers and the Management with

Senior or Management employees, which cannot be the case for the Enquiry officer to judge.

Besides, no event subsequent to the charge-sheeted event can be considered to qualify the first one.

The findings of enquiry shall be decided on the merits of the findings. Mere suspicion cannot be enough to punish the delinquent employee. Finally the enquiry report shall not be outside the scope of enquiry and limited only to the charges as mentioned in the charge sheet.

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