

Procedure to have a Domestic Enquiry - I

Blog Series – 12 **February 01 2020** **Statutory other than PoSH – Vol.6**

We have seen the definition of Misconduct and various types of it, with few Judicial references in the previous Blog (Blog series 10).

Further to prima-facie confirmation of a misconduct by an employee, the procedure to be followed is discussed in this blog.

In case of minor misconduct, most of the employers do issue a warning letter and reprimand the employee for the insignificant indiscipline. Otherwise, a formal domestic enquiry is set-up to prove indiscipline and decide on the further action.

No Employment regulation prescribe any procedure to conduct a domestic enquiry by the employer. Though there is no such statutory provision, the conduct of a domestic enquiry shall satisfy the essentials of Principle of Natural Justice.

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)
 - △ 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 instil confidence in the system. Types of Bias:
 - Pecuniary Bias
 - Personal Bias
 - Official Bias
2. Audi Alterem Partem (To hear the other side)
 - △ 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. Speaking Orders or Reasoned Decisions
 - △ It is now universally recognized that giving reasons for a certain decision is one of the fundamentals of good administration and safeguard against arbitrariness

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.

Rules of Natural Justice

Rule No.1 : The employee should know what is alleged against him

Rule No.2 : The employee should have reasonable time and opportunity to defend himself

Rule No.3 : The employee should have an opportunity to cross examine witnesses brought against him/her

Rule No.4 : All documents and evidence should be recorded in the employee's presence and no material should be relied upon against the employee without giving him/her an opportunity to defend him/herself

Rule No.5 : The employee should have an opportunity to bring in evidence of his/her choice to defend him/herself

Procedure to issue Charge sheet

1. A charge sheet is issued to the employee which is a memo of accusations or a violation service condition or rules with a detailed report
2. **Why Charge-sheet?** No action can be taken against any employee without it. As per the Principle of natural justice the employee will be given an opportunity to defend against the charges
3. **Who can issue Charge-sheet?** A person competent to appoint or dismiss employees
4. **When charge sheet is issued?** Upon prima-facie indiscipline found against individual employee
5. **Where to issue & where to have enquiry?** To the registered postal address in writing. Be Enquired in the office.
6. **How charge sheet is issued?**
 - a. A detailed – Legal, Ethical and Transparent details of charges
 - b. Charges – Specific, accurate, detailed (date/time/Place), unambiguous
 - c. In reference to Standing Order
 - d. Mention on document reliance
 - e. Do not mention proposed punishment (as a fair practice, it is accusation)

Post issuance of Charge sheet, the employee may be suspended, pending enquiry. In such cases, what is the process to be followed, will be discussed in the next blog.

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