

Workshop at Thane (28-03-2015)

Subject 3(a). Domestic/Departmental Enquiry-Procedure-Jurisdiction & Powers of Labour/Industrial Courts -Disciplinary Proceedings & Criminal Proceedings

Questions for Open House Discussion

Q.1 What is the distinction/difference between domestic enquiry & departmental enquiry ? Whether procedures in the two enquiries are distinct/different ?

Ans. Both the enquiries are an In house mechanism for dealing with the acts of indiscipline. Such actions/procedures in Government/Semi Government/Sector Departments are called departmental enquiry. In private sectors/industries, the term used is domestic enquiry. A procedure of departmental enquiry is generally prescribed in the Service Rules e.g. M.C.S.R. The procedure for holding domestic enquiry is normally found laid down in Model or Certified Standing Order.

Q.2 Whether it is necessary to record cross-examination during domestic enquiry in question-answer form, instead of merely recording the answers of the witness as is normally done in Court proceedings ?

Ans. Normally, the answers are to be recorded in the manner in which the same are given, as is done in Court proceedings. There may be an occasion when answer is required to be recorded in question and answer form depending upon the nature of the question or say when the witness is found not giving clear answer etc.

Q.3 Whether maintaining a roznama in a domestic enquiry is proper and also necessary ?

Ans. It is always proper to maintain a roznama. The enquiry record should reflect what happened in the enquiry. If the record does that, it may not be necessary to maintain a roznama.

Q.4 When the conduction of the domestic enquiry is not legal & proper, and the matter is taken to the Labour Court during pendency of the enquiry, whether the Labour Court can issue direction to the Enquiry Officer ?

Ans. A challenge to the pending enquiry is generally possible by filing a complaint under MRTU & PULP Act. In such a complaint if enquiry officer is impleaded as a party, appropriate directions can be issued to the enquiry officer in regard to the conduct of the enquiry, if prima facie , an unfair labour practice is found, and when the matter is finally decided, when such unfair labour practice is established.

Q.5 Whether/when findings of the Enquiry Officer can be quashed/set aside by the Labour/Industrial Court ?

Ans. Yes. Findings can be quashed or set aside when the same are found to be perverse i.e. based on no evidence.

Q.6 Whether rejection of the application for production of irrelevant documents renders the enquiry vitiated ?

Ans. No. Production or non-production of irrelevant documents has no effect on the fairness of the enquiry or correctness of the findings.

Q.7 Can an employee demand his subsistence allowance which was suspended by the Enquiry Officer, after starting co-operating/participating in the proceedings of the enquiry ?

Ans. Under Model Standing Order, there is no question of suspension of subsistence allowance as provided in Model Standing Order No.25. The subsistence allowance is reduced by the employer, if the findings of the enquiry officer show that the enquiry is prolonged for the reasons directly attributable to the workmen. If the allowance is reduced justifiably for certain period, there is no question of demanding additional allowance for that period.

Q.8 In ex-parte proceedings, whether the Enquiry Officer is supposed to give detailed reasons for his findings ?

Ans. The findings of the enquiry officer must be reasoned, even if the enquiry is ex-parte.

Q.9 Whether contradictions in the statement of witness in domestic enquiry can be considered by the Labour Court to hold the findings of the Enquiry Officer as perverse ?

Ans. The contradictions are supposed to be considered by the enquiry officer. A Labour Court does not sit in appeal over the findings of the enquiry officer. A Labour Court would examine the evidence, including material contradictions, and find out if the contradictions render the findings baseless or perverse.

Q.10 What is the test of perversity of finding of Enquiry Officer ?

Ans. A finding which is not supported by the material on record is perverse finding. A finding contrary to evidence is also a perverse finding.

Q.11 Whether enquiry is necessary, if the workman has admitted the misconduct ?

Ans. In case of admission of guilt, no enquiry is necessary.

Q.12 Whether Court can stay domestic enquiry on account of pending criminal case on the same set of facts ?

Ans. There is no strict rule or straight jacket formula. Ordinarily , there is no need to stay enquiry, the reason being, difference in the proceedings, degree of proof required etc. However, in a case where complicated questions of law & fact are involved, an enquiry can be stayed. In *M. Paul Anthony (Capt) Vs. Bharat Gold Mines Ltd.* (1999 I CLR Pg.1032) (1999 (82) FLR SC), it was held that the proceedings in enquiry & in criminal trial can proceed

simultaneously with a little exception, and that exception may be whether the D.E. & criminal case are based on the same set of facts, and the evidence in both the proceedings is common without there being any variance. In Noida Entrepreneurs Association Vs. NOIDA & Ors (2007 (112) FLR 1139 SC, it was held that D.E & criminal trial can proceed simultaneously unless complicated questions of facts & law are involved, and the subject matter is grave.

Q.13 Whether acquittal in criminal case would per se amount to dropping of domestic enquiry ?

Ans. Mere acquittal by itself does not amount to or tantamount to dropping or closure of the enquiry. However, in G. M. Tank Vs. State of Gujarat & Ors (2006 (4) LLN 28 SC) case, there was departmental enquiry as well as criminal proceedings based on identical facts, charge, evidence & witnesses. Criminal Court honourably acquitted the employee. Findings to the contrary recorded in the D.E. were held to be unjust, unfair, oppressive. Dismissal order was set aside.

Q.14 Whether straightway hearsay evidence can be admitted in domestic enquiry ?

Ans. Ordinarily, word “hearsay” means that a person has heard from somebody, and does not speak from his direct knowledge of the incident. Sometimes it means whatever a person declares on information given by others. Hearsay evidence is admissible provided it has reasonable nexus and credibility. Such evidence should be assessed carefully (State of Haryana Vs. Rattan Singh, 1977 AIR SC Pg.1512).

Q.15 Whether the enquiry can be conducted jointly in respect of different workmen if the charges are similar ?

Ans. Yes. A joint enquiry is permissible.

Q.16 When reasonable opportunity under Article 311 is analogous to the principles of natural justice, then under what circumstances the provisions of Article 311 can be dispensed with ?

Ans. The provisions can be dispensed with in cases as provided in proviso (a) to (c) of Article 311(2) of the Constitution.

(a) Where a person is dismissed or reduced in rank on the ground of a conduct, which has led to his conviction on a criminal charge.

(b) Where the authority concerned is satisfied that for some reason to be recorded in writing, it is not reasonably practicable to hold such enquiry.

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of security of the State, it is not expedient to hold such enquiry.

Q.17 When services are terminated without giving charge-sheet and without holding domestic enquiry, whether Labour Court can grant opportunity to the employer to justify its action and if yes, then what procedure is to be followed ?

Ans. Opportunity can be given if the termination was on the ground of certain allegation/accusation as that of a misconduct. The employer will have to plead and prove the allegation, and then justify the action taken. Employer has to plead in the written statement regarding the opportunity (KSRTC Vs. Lakshmiddevamma & Anr., 2001 II CLR 640). An employer has to request for leading evidence at appropriate stage, if the enquiry is held as vitiated, as held in Usha Breco Majdoor Sangh Vs. Management of M/s Usha Breco Ltd. & anr. (2008 LLR 619 SC).

Q.18 Whether it is necessary to supply copy of the findings of the Enquiry Officer to charge-sheeted employee before awarding punishment ? If not supplied, what is the effect ?

Ans. A copy is required to be supplied. Mere non-supply of copy would not be a ground to decide the whole matter, and grant the relief. Copy has to be ordered to be supplied. The workman has to show

the prejudice caused due to non-supply of the copy. A relevant decision is ECIL Hyderabad Vs. B. Karunakar – 1994 LLR 391 SC.

Q.19 Whether Labour Court or Industrial Court has jurisdiction to quash the charge-sheet, if it is illegal ?

Ans. Yes.

Q.20 What is the standard proof required in domestic enquiry and criminal proceedings ?

Ans. In domestic enquiry the standard of proof required is that of preponderance of probabilities, and in criminal proceeding, the proof must be beyond doubt. However, mere suspicion cannot take place of proof. This principle applies to the enquiry against Government employees as well as employees in Private sector.

Q.21 Whether the employer can initiate disciplinary action for the misconduct committed outside the premises/precincts of the establishment/ or in the vicinity thereof ?

Ans. Yes, if the conduct has the effect of subverting the discipline on the premises on the establishment. Depends upon the language and the meaning of particular misconduct enumerated in the Standing Order. Question of proximity cannot stand as a bar to indisciplined act being brought within the purview of the misconduct where it may have been committed outside the establishment, if it has the effect of subverting discipline or disturbing peace within the premises of the establishment (Mulchandani Electrical & Radio Industries's case reported in AIR 1975 SC Pg.2175).

Q.22 Whether an enquiry stands vitiated, if the preliminary enquiry papers are not placed on record at the time of conducting the enquiry ?

Ans. No.

Q.23 When proceedings of the enquiry are conducted in a language not known to the delinquent, whether the enquiry gets vitiated ?

Ans. Normally enquiry should be conducted in the language known to the delinquent. If it is not conducted in such language, but the delinquent participated in the enquiry thoroughly with the help of representative, there should be no reason to declare the enquiry vitiated on that ground alone.

Q.24 Whether an enquiry conducted after superannuation of the employee is lawful ?

Ans. An enquiry can be conducted after superannuation, if there is a provision in that regard in the Service Rules.

Q.25 If an employee is dismissed on conviction in criminal case but the conviction is set aside in appeal, whether the termination becomes invalid ?

Ans. If the dismissal is based only on conviction, the dismissal becomes liable to be set aside in the event the conviction is set aside. After acquittal the dismissal would be totally unjustified.

Q.26 Whether Enquiry Officer and Trying Officer can be one and the same person ?

Ans. Yes, if the Service Rules provide.

Q.27 Whether conducting enquiry is an essential precondition before dispensing with/terminating the services of an employee due to loss of faith ?

Ans. Question of conducting enquiry would arise if the termination is to be made for certain act of misdeed or misconduct. Termination on the ground of loss of faith can be justified when challenged before the Court , even in a case where no enquiry is conducted.

Q.28 What is the object of departmental enquiry ?

Ans. The concept of departmental enquiry is based on the principles of natural justice. Object is to enquire into an allegation of a misconduct so that the delinquent gets an opportunity of defence, and if the guilt is proved, the guilty can be punished, so as to maintain discipline.

Q.29 Who can be appointed as an Enquiry Officer ?

Ans. An Enquiry Officer may not be a legal expert, but he must possess fair knowledge of the procedure of the enquiry/principles of natural justice as the said principles govern the whole proceedings where there is no prescribed procedure to conduct the enquiry. The enquiry officer should not be biased, and should be able to function impartially.

Q.30 What are the effects of failing to hold an enquiry or of holding a defective enquiry ?

Ans. No enquiry and the defective enquiry are on the same footing. An employee can claim relief on that ground unless the employer justifies the action taken before the Court by leading evidence.

Q.31 Whether acquittal of an employee in criminal case would operate as res-judicata in so far as disciplinary proceeding is concerned ?

Ans. Normally no. Degree of proof required in the two proceedings is different. However, in exceptional case, there may be a bar. For reference -G. M. Tank Vs. State of Gujarat & Ors. (2006 (4) LLN 28 SC).

Q.32 Whether the Labour Court or Tribunal has power to reduce the punishment of discharge or dismissal ?

Ans. In appropriate cases, punishment can be reduced where the same is found to be unjustified or shockingly disproportionate. The powers

of interference are wider under Industrial Disputes Act.

Q.33 If the domestic enquiry is not fair, then should/could any evidence adduced in such enquiry be considered / accepted by the Tribunal for deciding the issues ?

Ans. Even if the enquiry is held as not fair, certain evidence like document can still be considered at a later stage while deciding the relevant issue.

Q.34 Whether enquiry is necessary in a case where employee is convicted by a Criminal Court ?

Ans. A further enquiry may not be necessary for proving something which is established in a criminal trial.

Q.35 Can a delinquent be permitted to be represented in enquiry by an Advocate ?

Ans. No, unless permitted by the other side or provided in the service rules. (Crescent Dyes & Chemicals Ltd. Vs. R. N. Tripathi, 1993 II SCC 115, 1993 I LLJ Pg.907 SC).

Q.36 Whether at an interim stage an enquiry could be held as vitiated for non-compliance with the principles of natural justice ?

Ans. At interim stage we deal only with the interim relief claimed. There is no question of deciding the enquiry issue finally. However, a prima facie observation can be made regarding non-compliance of principles of natural justice, and the effect thereof.

Q.37 Whether domestic enquiry can / need be stayed during pendency of the criminal proceeding, when the charges/allegations are same or similar ?

Ans. There is no strict rule or straight jacket formula. Ordinarily there is no need to stay enquiry, the reason being, difference in the

proceedings, degree of proof required etc. However, in a case where complicated questions of law & fact are involved, an enquiry can be stayed.

Q.38 Whether revision u/s 44 of MRTU & PULP Act is maintainable against an order on preliminary issue of fairness of enquiry and findings of the Enquiry Officer ?

Ans. Since the order in question is a final order, revision application is maintainable. However, there are some decisions, according to which such revision should not be entertained. The reason being that the order could be challenged after disposal of the whole matter. Some latter decisions take a view that in appropriate case, such order could be challenged.

Q.39 Whether the points relating to fairness of enquiry & perversity of finding should be tried together ? What is the effect if the said issues are not tried together ?

Ans. Perversity of finding is part & parcel of the broad issue relating to fairness of the enquiry. If the findings on both or on either of them goes against the employer, an opportunity to prove the misconduct is generally given. Therefore, issues should be tried together. Otherwise, after one issue is determined, depending upon its finding/answer, the other will have to be tried.

Q.40 Where an employee admits fairness of the enquiry, is it necessary to frame preliminary issue regarding perversity of finding ?

Ans. Depends upon the kind of admission given. If mechanics or procedural part only is admitted, it would still be necessary to find out, if the findings of the enquiry are perverse or otherwise. In such a case, issue will have to be framed. Even if the findings are held as perverse, the employer can claim an opportunity to lead evidence and justify the action taken.

Q.41 Having not raised any defence before the Enquiry Officer, whether

the relevant paragraphs of the affidavit filed in Labour Court, in respect of preliminary issue relating to legality of the enquiry, & the findings of the Enquiry Officer are liable to be discarded ?

Ans. There is no question of discarding as such. If the relevant part of the affidavit is also in the pleadings, then the Court may have to consider the same, though generally it is not accepted on the ground of “afterthought”.

Q.42 Whether the Labour Court can hold a fresh enquiry when apparently there is no defect in the enquiry, but the order of punishment is void due to incompetence of the authority ?

Ans. There is no question of holding a fresh enquiry. The defect is only due to want of authority or power to impose the punishment.

Q.43 Whether issuance of charge-sheet is mandatory when already show cause notice was given, containing specifics /specification of the misconduct ?

Ans. Issuance of a formal charge-sheet is not mandatorily required, if a show cause notice containing the required details is already issued.

Q.44 Whether it is mandatory to give copies of the statements of the witnesses in domestic enquiry to the delinquent ?

Ans. Yes.

Q.45 Whether Labour/Industrial Court can interfere with the departmental enquiry, or stay the enquiry proceedings ?

Ans. Normally the Court should be slow in interfering with the enquiry proceedings. However, in appropriate cases the Court is empowered to grant stay.
