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6.1 RETROSPECT

To recapitulate our indepth study into the system of Domestic Enquiry and analytical survey on the present practice of the system as deliberated upon in the preceding chapters, now we may summaries the same.

6.1.1 Introduction Chapter begins with the Raison d’etre of domestic enquiry system and the imperative need to study the system in the context of liberalization of world economy.

An industry is a social world in miniature. Industrial relations is a determining factor for productivity, stability and development. To ensure industrial peace and harmony, industrial relationship should be based on a concrete foundation of social morality conditioned by contemporary social norms and standards.

The Report of the Study Group of Industrial Relations (Eastern Region) of 1st National Commission on Labour, 1968 emphasized two basic objectives in regard to industrial relations: -

1. Avoidance of industrial disputes and creation of machinery for settlement of industrial disputes.

2. Creation of necessary atmosphere for the development of co-operation and harmonious industrial relations.
The rapid industrialization and technological revolutions have exposed the industrial relations to the risk of disaster, imbalance and mal-adjustment.

Grievance redressal machinery and discipline are characterized as the twin pillars of industrial relations.

The Industrial Disputes Act 1947, Industrial Employment (Standing Orders) Act 1946, and The Trade Unions Act 1926 are the three regulatory legislations which framed the infrastructure of industrial relations in India.

There are various factors leading to creation of industrial disputes. These may be generalized as follows:

(a) Service Conditions.
(b) Wage Structures
(c) Victimization on the ground of committing misconduct.

The present research work shall concentrate its study on the last factor of industrial disputes.

Victimization on the ground of misconduct is a controversial doctrinaire. The management may interpret the ‘misconduct’ in such a manner so as to satisfy their desire for victimization on the pretext of maintaining discipline and the workers may try to interpret the act as either bonafide worker’s right and not an act of misconduct. Thus it evoles the necessity of creation of a forum entrusted to enquire into the alleged misconduct impartially, fairly and speedily. Out of this imperative need, the institution of ‘Domestic Enquiry’ has been developed to address the situations.
In the context of economic liberalization and India's determination to play a key role in the world economy, a macroscopic as well as analytical and microscopic study have been made into the functioning of this important institution of Industrial Jurisprudence.

The various committees in 1960's and during the period 1978-1985 appointed by the Government of India emphasized the need for economic reforms and deregulation of the industries.

The process of economic liberalization as unfolded through New Economic Policy, 1991 has forced both the public and private sector enterprises to function in a competitive market economy.

The structural adjustment programme pursued in the New Industrial Policy has forced the Government to close down the sick industries and dismantling of the public sectors. The unbridled embarkment on the path of privatisation and free entry of the multinationals almost in all sectors of the Indian economy has led to a process of de-industrialization in the country. Working class of India is becoming more vulnerable and fragile against the odd forces of market economy and liberalization.

The protagonists of structural adjustment seek reform in labour laws to ensure free accumulation of capital. The deregulation of the economy has nullified all the planning existed in the country in a limited form. The Government of India has already reformed the corporate law of the country by enacting Securities Laws (Amendment) Act, 1995 and 1999, Foreign Exchange Management Act, 1999(Substituting Foreign Exchange Regulation Act) and Companies (Amendment) Act, 2000.
The New Industrial Policy and the signing of the World Trade Organization (WTO) Treaty by Government of India are to be judged in the context of such global interdependence.

The Industrial Policy Resolution 1991, has liquidated the socialist zeal pursued in the post independence period.

In the changed scenario of liberalization, globalization and privatization, this thesis is to evolve out how an effective protection to the industrial workers can be endowed.

In this thesis, the present researcher has utilized analytical, historical, empirical, statistical and critical methods of research. The researcher has conducted empirical surveys on the industries of Asansol- Durgapur region. He conducted an opinion poll on the concerned cross sections of the society. The opinion and data have disclosed the lapses in the existing domestic enquiry system. The conclusions evolved out leads to suggest and formulate an effective Domestic Enquiry Machanism.

6.1.2 Chapter 1 deals with Industrial Revolution and the emergence of working class, historical development of trade union movement and impact of globalization on such movement.

19th Century witnesses the general application of mechanical power to manufacture, transport and mining. The new inventions not merely altered all the old methods of production and distribution but also the human factor in production and distribution. A new horizon of personal liberty emerged as a consequence of French Revolution of 1789 and the Europe experienced a Renaissance. The new methods of manufacture and transports created new demands for raw materials and food, new areas were opened up,
new wants created and new market developed to knit up the whole globe in a world economy of inter dependence and rivalry.

This revolution transformed irrevocably the relations between capital and labour by sweeping away serfdom and removing all the medievaval and feudal limitation on free movement. With the introduction of new factory system replacing the home production, the position of the workers changed. Massed together they could discuss their grievances and gradually a class consciousness developed. All through the 19th century, unions had been developing, their object being to secure a standard wage, limitations on working hours and decent working conditions and social security legislations. Another aspect of industrial revolution was the rise of capital exploiting the unorganized labour. Laissez farie economy of hire and fire, the golden age of capitalism protected by the classical law of master and servant brought untold miseries to the lot of working class.

The emerging welfare state could not see this growing power of capital without imposing certain restrictions on its exercise. Started with the Factory Act 1833, a number of social welfare legislations were enacted to ameliorate the sufferings of workers. The doctrine of ‘Laissez Faire’ advocated by Adam Smith in ‘Wealth of Nations’ became redundant with the emerging concept of welfare state as protector of labour and as arbitrator of conflicting interest of labour and capital.

In India, as with agriculture, the British Indian Government controlled trade and industry purely with a view to foster British interest.

Being concerned by a exploitative imperialist colonial rule, in course of time, the Indian labours were compelled to adopt a
militant anti-imperialist approach and become a part of the freedom movement. On the other hand, Indian Capitalist gradually realized that they needed a Nation State and a Government favourable to indigenous capitalists.

Establishment of International Labour organization (ILO) in 1919 of which India is a founder member and the Russian Revolution to establish a socialist state in 1917 contributed significantly to transform the consciousness of the working class.

However, the rivalry amongst the Central Trade Unions has lead to multiplicity of trade unions. In India trade unions developed as corollary to the freedom movement. In the post independence period, the trade unions failed to mature independently.

In U.S.A., U.K., Japan and France, the workers participation in management has been guaranteed in one form or other. In India, the provision of Works Committee was there in the Industrial Disputes Act, 1947. Article 43 A of the Constitution instead by 42nd Amendment Act, 1976 opens a new perspective in industrial relation. This Article directs the State to take steps by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organization engaged in any industry.

Industrial development is a precondition to the globalization of the economy. Industrial peace and harmony are essential to ensure industrial progress of the Nation. Collective bargaining and participation in management are two instruments towards the path of industrial democracy. Liberalization of economy should not be allowed to liquidate these two concepts of industrial democracy.
6.1.3 Chapter II deliberates upon the existing legal systems vis-à-vis Industrial Relations in different countries.

In England, during the period of laissez faire, Industrial Relations was governed by laws of contract and property. Industrial Revolution irrevocably changed the old concepts. Consequent upon the popular agitation for an effective law, a factory law was passed in 1891 which regularized some of the evils of the factory system and Industrial Revolution.

Trade Union were given no legal status until 1871. By Trade Unions Act, 1871 and by a further Act of 1875, the Unions were fully legalized and freed from nearly all form of criminal liability in respect of Industrial conflict. The Conciliation Act, 1896 prescribes some governmental help in resolving disputes but on a purely voluntary basis. Then followed the Trade Disputes Act, 1906, which gave the Unions a position of exceptional privilege, and the same was further fortified by subsequent legislations in 1913 and 1945. There was no change to this position until the Industrial Relations Act was passed in 1971.

The British System of Industrial Relations is often characterized as a voluntary system. Only when the voluntary machinery has broken down or ceased to be effective, the legal provisions of the British Industrial Relations Act, 1971 can be invoked. Equally, this Act is not designated to cripple or hamper the Trade Union movement, which, after a period of consolidation and trial, has emerged as a stronger and healthier organization. The Industrial Tribunals of Britain enforce a variety of laws, including the Employment Protection Act, 1975, The Employment Protection (Consolidation) Act, 1978, The Employment Act, 1980, Equal Pay Act, 1970 The Sex Discrimination Act, 1975.
In the USA, the principal strengths of the grievance arbitration system are its largely voluntary nature and flexibility, and the opportunity it provides to employees, through their Unions, to participate in a process so vital to their employment. Further, the remedies available through arbitration tend to parallel statutory remedies available in the courts. The chief difference between Judicial and arbitral remedies is that the former sometime include damages, whereas the latter almost never do. After the Norrista Guardia Act, 1932 which exempted the Labour Unions from the restrictions of Shermans Act, 1890 by forbidding the Federal courts to issue injunction in labour disputes, The National Industrial Recovery Act, 1933 made another attempt to regulate all industries by voluntary codes set up by individual industry. The National Labour Relations Act, 1935 commonly known as Wagner Act aimed at avoiding the weakness of the National Industrial Recovery Act, 1933. The Labour Management Relations Act, 1947 (Taft-Hartley) and the Labour Management Relations Act, 1959 (Landrum-Griffin) laid down code of conduct for Union officials and employees as well as management consultants.

In Japan, the Industrial Relations are maintained under the Labour Relation Adjustment Law, 1946. For the Public Sector, the Public Co-operation Labour Relations Law, 1948 was passed. This Act provides for the methods of selecting negotiating committees representing the corporation and the employees for the purpose of collective bargaining. In Japan, both industrial and collective disputes are handled by the ordinary courts. The court may also play the role of a mediator, especially in respect of the appropriateness of such matters as collective dismissals or the procedural problems of bargaining sessions.
To create a normative frame work amongst the member countries, International Labour Organization (ILO) Conventions relates to right to association and collective bargaining and Recommendations concerning employment security played a key role of persuasive force in law making process.

Article 9 (2) of the Recommendation No. 158 adopted on 2nd June, 1982 categorically stipulated that the burden of proving the existence of a valid reason for the termination shall rest on the employer.

The two United Nations Covenants namely International Covenant on Economic Social and Cultural Rights 1966 and International Covenant on Civil and Political Rights 1996 have also created an awareness amongst the signatory Nations.

In India, the Industrial Employment (Standing Order) Act, 1946, The Industrial Disputes Act, 1947 and Trade Unions Act, 1921 constitute the very foundation of employer-employee relationship in independent India.

The preamble of the constitution pledges to ensure Justice Social, economic and Political to the citizens. The Directive Principles of State Policy alongwith the Fundamental Rights have established a frame work to ensure Socio-economic Justice to the working class of the Nation.

In pursuance of Recommendations of the Royal Commission on Labour, 1931 and the 1st National Commission on Labour, 1969, a wide range of reforms in the labour Law have been enacted. After an indepth study into the Industrial Relations System, the National Commission recommended reform in the system of Domestic Enquiry.
The Government has constituted 2nd National Commission on labour, 1999. It is expected that the Commission will play a social engineering job to ensure fair play between capital and Labour and to protect the Indian Labour against the vices of market economy. In this context, an in-depth study is required into the foundation of Industrial Relations System prevalent in India.

6.1.4 Chapter III has made an in-depth analytical study into the three major Industrial Relations laws in India namely:

(i) The Trade Unions Act, 1926 - To ensure collective bargaining rights.

(ii) The Industrial Employment (Standing Order) Act, 1946 - To ensure terms and conditions of the employment.

(iii) The Industrial Disputes Act, 1947 - To ensure the settlement of industrial disputes through state intervention.

The main object of the Trade Unions Act is the registration of Trade Unions. The Act provides immunity to trade unions executive and members from civil and criminal liability for bonafide trade union activities. This Act is a statutory recognition to the Right of Association and the Collective Bargaining.

The object of the Industrial Employment Standing Orders Act, 1946 is to regulate the conditions of employment, discharge, disciplinary action, suspension of the workers employed in industrial undertakings or establishment.

The Industrial Disputes Act, 1947 was enacted to provide a machinery for peaceful settlement of industrial disputes. This Act is a comprehensive measure adopted by the Central Government with a view to improve industrial relations. Though the Act is mainly for
workers in the unorganized sector. In order to remove the shortcomings noticed in the working of the Act, the Act has been amended from time to time.

The introduction of Section 11A in the Industrial Disputes Act, has brought about a sea change in the practice of disciplinary matters affecting an employee vis-a-vis employer in an industrial establishment.

Section 11A has been inserted in compliance with the Recommendation no 119 (June 1963) of ILO which prescribes that 'In case of termination of service, a worker should have a right to appeal to a neutral body and that neutral body should have the power to order reinstatement or adequate compensation or some other relief.'

To sum up, we may observe that various efforts have been made to reform the system but due to disagreement between various interest group, the basic framework remain unaltered. The adjudicating machinery has gradually been infected with all the chronic diseases of main stream judicial system. To ensure the harmony between capital and labour and sharpen the competitive edge of industry, frictions should be minimized. Since the adjudicating machinery is still struggling to perfectuate its functions, the industry needs an institution which can lubricate the roughness of the relations. In this context, a study is required to analyse the present practice and procedure of domestic enquiry system in order to arrive at the conclusion of either retaining the present form or restructuring the same. It has also to be seen whether the Domestic Enquiry can play a greater role in the Industrial Relations System.
6.1.5 **Chapter IV** made an indepth study into the practice and procedure of Domestic Enquiry and its importance in disciplinary process.

This institution is an off shoot of Philosophy of Social Justice, sanctified by Judicial pronouncements and rules made under them and fortified by the fundamental rules of Natural Justice.

‘Domestic enquiry’ was of no import or relevance to the law of master and servant, in the context of philosophy of laissez faire, which one held the field everywhere prior to Industrial Revolution. The master was absolute Judge in these matters and he was only answerable to the courts under common law, when any action for damages was brought against him by the employee and that too under law of contract only.

Under the common law, slowly a practice was developed to the effect that the courts insisted upon the employer to hold an impartial fact finding enquiry before taking any disciplinary action against the delinquent employee. After Industrial Revolution and with the introduction of Factory System in productions, a new horizon of employer-employee relationship ultimately emerged out of the National policies of interventionist Welfare State and Trade Union movement. The employers right to hold the Domestic Enquiry against a delinquent employee for committing misconduct still exists, but now the law requires that the employer shall conduct the Domestic Enquiry in compliance with the Principles of Natural Justice.

Discipline, indeed is the very basis of a well organized and established enterprise. The root cause of disciplinary action is the commission of misconduct.
A Domestic Enquiry is a fact finding forum to enquire into the charges of misconduct allegedly committed by an employee. It is a Quasi Judicial proceeding and the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 are not strictly applicable to Domestic Enquiry. The essential requirement is that the rules of Natural Justice have to be observed in holding it and it includes the following two basic principles of equity.

1. No one shall be a Judge in his own cause (i.e. *nemo Judex in propria causa sua*) - he must not have anything like personal interest in the case.

2. No decision shall be given against a party without affording it a reasonable hearing (*audi alteram partem*).

The procedure of domestic enquiry which is generally accepted has been evolved and governed by three factuals i.e. the service rules/standing orders, the method followed by courts of law and the principles of Natural Justice.

An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges leveled against him (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges (iii) the employee is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and (iv) the enquiry officer records his findings with reason for the same in his report.

The Domestic Enquiry starts the moment the charge sheet is issued to the workman. An employer may suspend a workman on finding
that misconduct complained against him is of grave and serious nature. Suspension can be ordered either before the issue of charge sheet or after the receipt of reply of the employee or at any time during the pendency of the enquiry proceedings or after the findings of the enquiry varying according to the circumstances. Standing orders provide for the payment of subsistence allowance by the employer during the period of suspension pending departmental enquiry or criminal proceedings. Rule 14 of Industrial Employment (Standing Orders) Central Rules, 1946 read with sec. 10 of the Employment (S.O.) Act, 1946 provides the law relating to suspension.

After a careful consideration of explanation of the delinquent employee or when no reply is received within the specified time limit, the management appoints enquiry officer to hold an enquiry. The immediate duty of an enquiry officer is to send notice to all the parties i.e. the delinquent employee and the management directing them to present with the witness and documentary evidence, if any, for the enquiry. Management Representative has a right to cross-examine the charge sheeted employee as well as witness produced by him. A charge sheeted employee may be represented by co-worker or the Union/association executives. Generally, the standing orders provides Rules in this regard. In Domestic Enquiry, guilt need not be established beyond reasonable doubt, proof of misconduct through preponderance of probabilities is sufficient.

The Employer has to establish by leading oral and documentary evidence before the Enquiry Officer that the misconduct has been committed.

There is no provision of law, under which the Enquiry Officer can compel the attendance of witnesses or production of documents.
Examination of witnesses is a critical phenomenon in the enquiry process. An enquiry can be held vitiated in case the charged workman has not been provided a fair chance to hear the evidence in support of the charge and put such relevant questions by way of cross-examination as he desires and then he must be given a chance to rebut the evidence led against him.

The whole object of holding a Domestic Enquiry against a charged workman is to enable the enquiry officer to decide upon the merits of the dispute before him, and the enquiry must confirm to the basic requirements of Natural Justice and one of the essential requirements of a proceeding is that when the enquiry is over, the enquiry officer must consider the evidence and record his conclusion and reasons to the same.

The Supreme Court in Union of India vs. Mohd. Ramzan Khan case AIR 1991 SC 471 altered the legal position. While making an indepth study into the Principles of Natural Justice, the Supreme Court held that "the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of Principles of Natural Justice to deny the said right. It is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Govt. or non Government, public or private."

The Enquiry Report and the representation, if any, of the delinquent employee, are to be considered by disciplinary authority. It is incumbent on the disciplinary authority to judiciously consider the findings of the enquiry officer. It is open to such authority to agree or disagree with the findings of the enquiry officer. When there is disagreement between the Enquiry Officer and the disciplinary authority and the Enquiry Officer has exonerated the
charged employee, the disciplinary authority is not only bound to furnish a copy of the report, but also to inform the employee about the tentative conclusion about his guilt and also to give representations against such conclusion.

Imposing punishment is the last stage in the disciplinary proceedings against a delinquent workmen. This stage commences after the disciplinary authority has received the report of the Enquiry Officer, a copy of the report served upon the delinquent employee asking his representation and has received the representation, if any.

Upon considering the gravity of the misconduct and the extenuating circumstances, if any, and also any other factor that may be relevant in the facts and circumstances of the case, the disciplinary authority has to decide the quantum of punishment that may be imposed on the delinquent.

Broadly, in the area of Industrial law, the punishments which an employer can impose, as a measure of a disciplinary action for an act of misconduct, on a workman are: (i) warning (ii) fine (iii) withholding of increment (iv) demotion (v) suspension (vi) discharge and (vii) dismissal from service.

In the disciplinary proceedings, the true legal position in regard to the findings recorded by an Enquiry Officer and the legal effect of his report may be summed up as follows:-

(i) The Enquiry Officer holds the Enquiry against the delinquent as a delegate of the employer.
(ii) The object of the Enquiry is to enable the Employer to hold an investigation into the charges framed against a delinquent, so
that the Employer can, in due course, consider the evidence adduced and decide whether the said charges are proved or not.

(iii) 'The findings on the merit' recorded by the Enquiry Officer are intended to supply appropriate material for the consideration of the Employer. Neither the findings nor the recommendation are binding on the Employer.

(iv) The Enquiry Report alongwith the evidence recorded by the Enquiry Officer constitutes the material on which the employer has ultimately to act.

The Domestic Enquiry as a fact finding forum plays a crucial role in the Industrial Relations System. The first National Commission on Labour in its Report noted the dissatisfaction of the workers in the fact that in conducting the Enquiry, the Employer combining in himself the functions of a prosecutor and Judge. While analyzing the present practice and procedure, it has been observed that the existing laws need reform to strengthen the system. The Employer may utilize it as a mere formality to punish the unwanted employee and the delay-dallying adjudicating machinery with all its lacunas may cause irreparable injustice to the employees. On the other hand, the institution of Domestic Enquiry has the potency to be an unparallel effective machinery to develop and ensure industrial harmony. There is scope to equip the institution to deliver a new era in the Industrial Jurisprudence.
6.1.6 **Chapter V** deals with Microscopic and Macroscopic analysis of Domestic Enquiry System.

An analytical study has been made into the Public and Private industries of Asansol-Durgapur Region. The evolution of this geographically important rural areas into flourishing urban economic-centres is an integral part of the history of modern India. The harmonious employer-employee relationship is a precondition to the development of this industrial region.

The study into the industries of this region reveals that the Enquiry Officers appointed by Employers are lacking the proper experience and the training. Delay and biasness are other lapses prevalent in the system. The power of Enquiry Officer is also not adequate to bring out the fact.

An opinion poll is also conducted on various concerned cross sections of the Society. Employers, Trade Union leaders, Eminent Labour law experts, Chairmen of National Human Rights Commission/Ex-Chief Justice of India, Academicians and employees all have contributed in this research by rendering their valued opinion on the issues raised in an exhaustive questionnaire. An evaluation has been made to appreciate the opinion rendered on various aspects of the Domestic Enquiry. While suggesting the continuation of the Institution of Domestic Enquiry, majority has opined the reform in the system. Opinion emphasized the strengthening of the institution in the context of liberalization. Opinion poll suggested reform in the procedure as well as in respect of scope of Domestic Enquiry System. The poll suggested the empowerment of Enquiry Officer to bring out the facts. The poll emphasized the imperative need to amend and codify the law relating to Domestic enquiry.
6.2 PROSPECT: SUGGESTIONS & CONCLUSION

In this thesis, we have made an in-depth study into the Industrial Relation Systems in a broad perspective. A detailed deliberation has been made into the existing practice and procedures of Domestic Enquiry System.

The microscopic and macroscopic analysis of the Domestic Enquiry have revealed the lapses and lacunae in the present system. Now, while appreciating the deliberations in the preceding chapters, analysis, empirical survey and opinion poll, we may proceed to formulate the suggestions and conclusions of the present thesis.

6.2.1 Qualification, Experience and Appointment of Enquiry Officer:

In Chapter V, we have observed how the opinion poll and the study conducted into the Industries of Asansol – Durgapur Region emphasized the need of reform in the appointment process of Enquiry Officer. Opinion and data collected have indicated that the purpose of holding Domestic Enquiry are often defeated due to the biasness, unfairness and incompetency of Enquiry Officers. Views were also there that Domestic Enquiry should be done by an independent body and the institution of Domestic Enquiry should be educative and may be renovated to make the delinquent employee a sincere and responsible one. It has also been revealed that on being challenged, the Domestic Enquiries conducted in private Sectors are often declared as bad in law by the adjudicating authority.

Mostly the serving officers of the establishment are appointed as Enquiry officer. Employers are of the view that the retired Judges and practicing lawyers are too much legalistic and their appointment often delayed the procedure. Further, they could not
appreciate the importance of discipline to achieve the organizational goal.

On the other hand, in Chapter IV, we have appreciated the intricacies of practice and procedure of Domestic Enquiry. An enquiry Officer is supposed to be well conversant with the Rules of Evidence, Civil and Criminal Procedures, Natural Justice and Equity.

In Chapter III & IV, while making an in-depth study into the Reports of the First National Commission on Labour, we have noted the dissatisfactions of the workers as recorded by the Commission. Basic dissatisfaction of the workers was that the employers is combining in himself the functions of a Prosecutor and Judge. One of the suggested changes were “Inclusion of a worker's representative in the Domestic Enquiry Committee.”

To ensure trust and security, workers participation in management shall be implemented in this area also. We have discussed this aspect in Chapter 1

While appreciating all these deliberations and analysis, it is proposed that:

(i) Appropriate Government shall formulate rules prescribing qualification and experience for the post of Enquiry Officer.

(ii) Such rules shall also prescribe that every establishment shall prepare a panel of Domestic Enquiry officer from the officers of the establishment and executives of recognized trade unions. Appropriate Govt shall also specify the nos. of Domestic Enquiry Officers to be empanelled in an establishment depending upon the numbers of employees working in such establishment.
(iii) Establishment shall notify such panel and copy of the same shall be forwarded to the Appropriate Government.

(iv) Appropriate Government shall provide adequate training facility to such officers and the establishment shall bear the expenses of such training..

6.2.2 Time Limit for completion of Domestic Enquiry:

Opinion Poll and the analytical study have confirmed that delay to complete the Enquiry is one of the major lapses in this institution. Delay causes frustration amongst the delinquent employee. In the case of suspension, it has a devastating effect on the morale of the employee. Employer is equally affected by such delay. Firstly, employer has to pay suspension allowance but the manpower is not available at his disposal. It has no other option except to wait for the completion of disciplinary proceedings. In case the charge is proved, dismissal or any other penalty as the case may be, to be imposed by the disciplinary authority. In case the charge is disproved, although the findings of enquiry officer has no bindings effect on the disciplinary authority but it is usual to accept the findings and to reinstate the employee. In such case, the employee may be entitled to the balance amount of his salary and other benefits including increments and promotion. So, expeditious completion of the Enquiry will serve the interest of both the parties, Employer and Employee.

During analytical survey it was revealed that delay is caused for the following reasons:-

(i) Non-Co-operation of Employee.
(ii) Non-Co-operation of presenting officer.
(iii) Non-Co-operation of witnesses.
(iv) Reluctancy and other urgent pre-occupation of the Enquiry Officer.

(v) Inadequacy of the power of Enquiry Officer.

In most of the organizations, Domestic Enquiry is being conducted in an adhoc manner.

In view of the above, it may be stated that a time limit shall be prescribed for completion of Domestic Enquiry. However, to cope up with the justified reasons for delay, the rule shall also provide flexibility to extend the time limits.

Accordingly, it is proposed that:-

Three months time shall be fixed for the conclusion of the Enquiry. In case of any extension required beyond the said period, the Enquiry Officer shall make an application before the competent labour court/industrial tribunal and the labour court/industrial tribunal may extend the period after giving opportunity of hearing to all the parties i.e. Enquiry Officer, Presenting Officer and the Delinquent Employee.

Provided that the Enquiry Officer shall prefer such application at least fifteen days before the completion of such three months and the labour court/industrial tribunal shall dispose of such application within fifteen days from the date of filing.

Provided further that the labour court/industrial tribunal may entertain any such application after expiry of three months on its satisfaction that such application was not filed for any reason beyond the control of the Enquiry Officer.
6.2.3 Power of Enquiry Officer: -

In Domestic Enquiry, the burden of proof to lead evidence is on the Employer. However, in some cases, where the prime witnesses had already retired or resign or adamant not to appear before the Enquiry Officer, the Enquiry Officers may find himself helpless to conduct the proceeding effectively. In case, the charge relates to moral turpitude for an act outside the premises of industry, evidence of outside witnesses may be required. The Enquiry Officer shall be equipped with the power to summon witnesses and requiring the production of documents to enquire into such matter.

Article 9 of the I.L.O. Recommendation No. – 158 (adopted on 2nd June, 1882) has specifically prescribed that 'The burden of proving the existence of a valid reason for the termination shall rest on the employer.'

Under Section 11A of the Industrial Disputes Act, 1947, a Labour Court or an Industrial Tribunal has powers to investigate both whether the disciplinary action itself is fair and proper, and whether the punishment imposed is Justified and if not, whether any other punishment, under the circumstances, would meet the ends of Justice. Under Section 11-A, the legislature has vested in the adjudicating authority all the powers which are normally exercised by appellate authority. However, the Proviso of Section 11A provides that in any proceeding under this Section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. The evidence recorded before the Enquiry Officer Constitutes vital materials on record to decide the
validity of Enquiry. While exercising discretion, the adjudicating authority cannot go on a fishing enquiry in search of evidence.

In view of the above, it may be stated that the scope of Domestic Enquiry in adjudication of Industrial dispute has been widened. But this institution lies far behind from its entrusted role. Unless the power of domestic Enquiry Officer adequately increased, it is difficult to expect any improvement in its performance. Opinion Poll and empirical survey made in Chapter V have emphasized the imperative need to strengthen this institution.

The Public Servants (Inquiries) Act, 1850 was enacted for regulating inquiries into the charges against the Public Servants. Section 8 of this Act empowers the Commissioner, *interalia*, to summon witnesses and for compelling the production of documents. They have powers of punishing for Contempt’s and obstructions to their proceedings as is given to Civil and Criminal Courts. Before the enactment of the Commissions of Inquiry Act, 1952, the Government ordered Public Inquiry either by executive notice under the Public Servant (Inquiries) Act 1850 or by making ad-hoc legislation. To meet the ever-growing need of imperative demand for Public Inquiry by Independent and Impartial Authority, the procedure adopted by the Government was found to be cumbersome and inadequate and ultimately, the Commissions of Inquiry Act, 1952 was passed. Sections 4 to 5B of the Act have empowered the Commission adequately to bring out the facts involved in the matter. Under Section 4 of the Act the Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil procedure, 1908, in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
(b) Requiring the discovery and production of any document;

(c) Receiving evidence on affidavits.

(d) Requisitioning any public record or copy thereof from any court or office;

(e) Issuing commissions for the examination of witnesses or documents;

(f) Any other matter which may be prescribed.

Sections 5, 5A and 5B provides for an elaborate power scheme for the Commission.

Similarly, under the Departmental Inquiries Act, 1972, every Inquiring Authority, authorized by the Central Government, shall have the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908. However, surprisingly the situation in industry is different. Here the delegatee of the employer conducts the enquiry as if only to satisfy the requirements of principles of Natural Justice. To bring out the facts, he has no such power to enforce the attendance of any witness or compelling the production of any document. But, the employer has the discretion even to dismiss an employee relying on the finding of enquiry officer. Opinion Poll has suggested very rightly that the procedure of Domestic Enquiry should satisfy the requirements of Articles 14 and 21 of the Constitution of India.

The purpose of conducting Domestic Enquiry by an Employer of an Industry is not different from the Inquiry under the Commissions of Inquiry Act, 1952. The purpose is to bring out the facts in respect of the alleged charges.
In view of the above, it is proposed that the Domestic Enquiry Officer shall have the following Powers:-

(a) Summoning and enforcing the attendance of any person and examining him on oath;
(b) Requiring the discovery and production of any document;
(c) Receiving evidence on affidavits;
(d) Requisitioning any Public record or copy thereof from any court or office;
(e) Issuing commissions for the examination of witnesses or documents;

6.2.4 Domestic Enquiry – A compulsory one.

The fifth schedule of the Industrial Disputer Act, 1947 which has a list of unfair labour practices, does not specify that non conducting of Domestic Enquiry before dismissal or discharge, is an unfair labour practice. But it provides that “Conducting of a domestic enquiry in utter disregard of the Principles of Natural Justice is an unfair labour practice attracting the penalty of imprisonment for a term up to six months or with fine which may extend to Rs. 1,000 or both.”

This provisions appears to discourage conducting of a domestic enquiry before discharge or dismissal.

The fifth schedule may be amended to include ‘Non Conducting of proper Domestic Enquiry before taking any disciplinary action is an unfair labour practice’
Section 33 (1) (b) of the Industrial Disputes Act provides:

'During the pendency of proceedings before a conciliation officer or a board of conciliation or an arbitrator or a labour court or Tribunal or National Tribunal, the Employer cannot discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, except with the prior permission in writing of the authority before which the proceeding is pending.

The employer can discharge or punish, whether by dismissal or otherwise, the workmen in connection with matters not connected with the pending dispute, but will have to get it approved by the authority before whom the dispute is pending.'

Thus, if the discharge or dismissal is connected with the matter pending before any of the said authorities, prior permission is required, and in cases of discharge or dismissal not connected with the matter pending before the said authorities, post approval is required.

Any employer who contravenes the above provisions shall be punishable with imprisonment for a term that may extend to six months, or fine which may extend to one thousand rupees or with both.

However, nowhere in the section it is mentioned that the employer is required to conduct a Domestic Enquiry into the alleged charges. On plain reading, it appears that either prior permission or post approval, as the case may be, will sanctify the discharge or dismissal. This section may be amended to prescribe that the employer shall conduct a proper Domestic Enquiry into the alleged charges before imposing any penalty on such employees.
6.2.6 TRANSFER AS A SUBSTITUTE OF SUSPENSION:

Employer shall not resort to suspension as a routine manner in every case of alleged serious misconduct. When the employer has branches in other places, he, in appreciation of the circumstances objectively, shall consider the transfer of the delinquent Employee to other branch. This will help the Employer to utilize the manpower and by such transfer, the delinquent employee may be saved from the stigma of suspension.

6.2.7. REFORMATORY APPROACH

In Chapter V, while evaluating the opinion poll, it was observed that the views suggested to reform the institution of Domestic Enquiry into a transforming and rehabilitation process in appropriate situation.

While making the empirical study on the Industries of Asansol-Durgapur Region, it reveals that in most of the cases the nature of misconduct are attributable to bad habits and communication gapes between the Management and its employees. Such problems are required to be addressed by appropriate counseling.

Under the Probation of Offenders Act, 1958, the State is taking the responsibility to reform a criminal and to make him a responsible citizen. Similarly, in appropriate cases, the enquiry officer shall be empowered to recommend counseling and/or to keep the delinquent employee in probation.

In view of the above, it is proposed that:-

(I) The Domestic Enquiry Officer may, during the pendency of enquiry or in his report, recommend to provide counseling to the delinquent employee, and / or
(II) The Domestic Enquiry Officer may recommend, to acquit the delinquent employee on probation of good conduct, after due admonition for minor offences committed for the first time.

6.2.8. NEW ROLE FOR DOMESTIC ENQUIRY: AN ALTERNATIVE DISPUTES REDRESSAL FORUM

Traditionally, the Domestic Enquiry is conducted to enquire into the charges of alleged misconduct against an employee. The Domestic Enquiry has no role to play in other areas of Industrial Disputes such as disputes relates to age, wage structure, compassionate employment, service conditions, illegality of strike, lockout and lay off. The proposed reform in the Domestic Enquiry System will equip the same to play a new role as an alternative disputes redressal forum in industrial relations system.

To enquire into the grievances arising out of contract of Employment, wages, disputes relates to date of birth, compulsory retirement, compassionate Employment, service conditions etc., the Employer shall constitute a Domestic Enquiry Tribunal to enquire into the grievances and to decide on the issues involved. This new role of Domestic Enquiry will ensure the minimization of litigations in Industrial Relations. This Tribunal may act also as Arbitral Tribunal under the Arbitration and Conciliation Act, 1996 to decide the disputes/issues arises in the industrial relations.

6.2.9. CODIFICATION OF THE LAW RELATING TO DOMESTIC ENQUIRY:

When a penalty imposed by an Employer is challenged, the labour court / Tribunal decides the fairness of Domestic Enquiry as a preliminary issue. Needless to mention that procedure to be followed in a Domestic enquiry is wholly Judge made and unless the same is codified, even a competent enquiry officer may be confused to follow the principles of Natural Justice.
As for example, the issue whether leading questions can be asked during examination in chief of enquiry Proceedings has been decided differently by different High Courts. While Calcutta High Court decided in affirmative, the Madras High Court observed negatively. The issue has not been decided by the Supreme Court. In such matters, the legislature should prescribe the procedure in clear terms. The opinion poll has also suggested the codification of the laws relating to Domestic Enquiry and inclusion of such laws in the Industrial Employment (Standing Order) Act, 1946.

In view of the above, it is proposed that:-
The law relating to the procedures of Domestic Enquiry shall be codified and the Industrial Employment (Standing Order) Act, 1946 may be amended to prescribe the exhaustive procedures.
COMPLIMENTARY REFORM

The Impact of strengthening the Domestic Enquiry System should be appreciated by the equally reformed administrative and adjudicating machineries. A reform is to be initiated to expedite and humanize the whole system. Accordingly, we may propose the following suggestions.

6.2.10 TIME LIMIT FOR REFERENCE:-

Section 10 of Industrial Disputes Act, 1947 provides for reference of disputes to Boards, Courts or Tribunals. This section empowers the Appropriate Government to refer an industrial dispute to Labour Court or Industrial Tribunal for adjudication. However, no time limit has been fixed for such reference. It is now well settled that the discretion is neither unfettered nor arbitrary, for Sec 10(1) clearly provides that there must 'exist' an 'industrial dispute' as defined by the Act or such a dispute must be 'apprehended' before the Government decides to refer it for adjudication.

No period of limitation has been prescribed in the Act for making a reference under S 10 (1). In Shalimar Works Ltd. v. its workmen, the Supreme Court pointed out that through there is no prescribed time in making a reference of disputes to Industrial Tribunal under Sec. 10(1), "even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed." The Appropriate Government should not revive stale disputes on the pressure of unions. A proper spirit should be cultivated from the beginning of the process. In Chapter V, opinion poll has suggested the need to prescribe a time limit for reference. On the other hand, in the matter of making a reference, the Appropriate Government is the Supreme Authority and the Tribunal would hardly enter that area.
In view of the above, it is proposed that:

The Appropriate Government shall refer the disputes to Labour Court / Industrial Tribunal within one month from the date of failure of conciliation proceeding or raising of dispute, as the case may be.

6.2.11. REFORM IN ADJUDICATING MACHINERY

The scope of Domestic Enquiry in the adjudication of Industrial Disputes can be widened only by reforming the existing adjudicating machinery. In the course of time, our labour Court and Industrial tribunal has gradually been infected by all the vices of the main Judicial System. Further,

(a) The Administrative Tribunal constituted under the Administrative Tribunal Act, 1985 has power to punish for contempt under Section 17 of the Act. However, the labour Court and Industrial Tribunal constituted under the Industrial Dispute Act have no Jurisdiction to issue contempt proceedings. This lacunae causes delay in the execution of the orders of Labour Court and Industrial Tribunal.

Opinion poll has suggested that the Labour Court and Industrial Tribunal should have jurisdiction to issue contempt proceedings.

(b) No time limit has been prescribed to adjudicate the dispute by Labour Court and Industrial Tribunal.

(c) No separate judicial service has been constituted for labour Court and Industrial Tribunal. The same sets of Judges & lawyers have made the system vulnerable to common diseases of the main adjudicating system.
In view of the above, it is proposed that:

(a) The Industrial Disputes Act may be amended to confer power on Labour Court and Industrial Tribunal to issue contempt proceedings.

(b) The Industrial Dispute Act may be further amended to provide the following:-
Labour Court and Industrial Tribunal shall have to dispose of reference/complaint cases within six months from the date of reference/filing, failing of which the Labour Court/Industrial Tribunal shall submit a failure report to the appropriate Government. The appropriate Government shall have the discretion to extend the time limit or to transfer the case to another Labour Court/Tribunal.

(c) A separate Judicial service may be constituted for labour /Industrial Court.

6.2.12 DISMISSAL REQUIRES CONFIRMATION BY INDUSTRIAL TRIBUNAL

Chapter XXVIII (Section 366 to 371) of Criminal Procedure Code, 1973 has prescribed the submission of death sentences for confirmation.

Sec. 366 (1) provides when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

To appreciate the caution guaranteed in law, we may quote Sections 367 to 371 of Criminal Procedure Code:-

S.367. Power to direct further inquiry to be made or additional evidence to be taken – (1) If, when such
proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

S.368. **Power of High Court to confirm sentence or annul conviction**
- In any case submitted under Sec. 366, the High Court-
  (a) may confirm the sentence, or pass any other sentence warranted by law, or
  (b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or
  (c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

S. 369. **Confirmation or new sentence to be signed by two judges** – In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court shall, when such court consists of two or more judges, be made, passed and signed by at least two of them.

S. 370. **Procedure in case of difference of opinion** – Where any such case is heard before a Bench of Judges and such Judges are
equally divided in opinion, the case shall be decided in the manner provided by section 392.

To appreciate the caution imposed in this regard, we may quote Section 392 of Criminal Procedure Code.

Procedure where Judges of Court of Appeal are equally divided:­

When an appeal under this (Chapter xxix) is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinion, shall be laid before another Judge of that court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the Judgment or order shall follow that opinion.

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge so requires, the appeal shall be reheard and decided by a large Bench of Judges.

In this age of acute unemployment and competition, Dismissal or discharge may be termed as the Economical Death Sentence. When a penalty is imposed, the whole family of the delinquent becomes the victim of the circumstances. Employer should impose this extreme penalty only after confirmation by an impartial competent authority. Opinion poll has confirmed the need of such provision.

In view of the above, it is proposed that the Industrial Employment (Standing Order) Act, 1946 may be amended to provide the following:-

(i) On due consideration of the Enquiry Report, the employer shall have the power to impose any penalty except termination, dismissal or discharge.
(ii) In case of Dismissal or Discharge, the employer shall submit the proceedings to the competent Industrial Tribunal.

(iii) The Industrial Tribunal may confirm the penalty.

(iv) If, the Industrial Tribunal thinks that a further Enquiry should be made into or additional evidence be taken upon on any point bearing upon the guilt or innocence of the delinquent, it may order such Enquiry to be conducted by the employer. In such case, the employer shall conduct further enquiry or proceeding as the case may be, before imposing any penalty.

Provided that the Industrial Tribunal shall pass appropriate order within one month from the date of submission of the proceeding.

Provided further that no order of confirmation shall be made until the period allowed for preferring review petition/appeal under the Service Rules/Standing Order, if any, has expired or if review petition/appeal is preferred within such period, until such review petition/appeal is disposed of.

Provided further that such action shall not bar the delinquent employee/ Trade Union from raising any Industrial Disputes in case dismissal is confirmed by the Industrial Court or after conducting the further enquiry employer has confirmed the proposed penalty.
6.3 References

1. The Committee On Public Undertaking (COPU - 10th Lok Sabha) in its 9th Report dated 19th August, 1992 after in-depth study into the pending litigations in Public Undertakings, has recommended the settlement of disputes, through conciliation, negotiation and arbitration.

The Committee has recommended compulsory inclusion of arbitration clause in contracts. While observing the malady of resorting to futile and avoidable litigations by Public Undertakings, the Committee recommended guidelines to enable the Public Undertakings to initiate speedy action for eliminating of unnecessary and avoidable litigations.

The General Assembly of the United Nations, in its Resolution No. 40/72 dated December 11, 1985, recommended :-

"All states give due consideration to the Model Law on International Arbitration, in view of the desirability of uniformity of law of arbitral procedures and the specific needs of international commercial practice".

A no. of countries enacted laws to give legal force to the United Nations Commission on International Trade Law, 1966 (UNCITRAL Model Law) within their jurisdictions.

The new Arbitration and Conciliation Act, 1986 passed by the Indian Parliament has substituted three statutes namely, the Indian Arbitration Act, 1940, based on the English Arbitration Act, 1934, the Arbitration (Protocol
and Convention) Act, 1937, based on the General Protocol, 1923 and the Foreign Awards (Recognition and Enforcement) Act, 1961, based on the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. The new Act is based on the UNCITRAL Model Law and provides freedom to the parties in carrying out the arbitration agreement subject to minimum restrictions. The Acts strengthens the powers of arbitrators while the Court’s role is limited to cases where either the arbitral process needs assistance, or there has been or is likely to be, a clear denial of justice. The Conciliation Proceedings has been given a statutory footing under the Act.

In this context, it is desirable that the scope of the Arbitration may be appreciated to settle the industrial disputes amicably. Though the Recommendations of COPU are enforceable in Public Undertakings, but the spirit of the same may be appreciated in private sectors also.

2. For a Government Servant, Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides procedure for imposing major penalties.

Rule 14 Of The Central Civil Service (Classification, Control and Appeal) Rules, 1965 provides:
Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 (i.e. major penalties) shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

EXPLANATION.-Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to held an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge:

(ii) a statement of all imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-
(a) a statement of all relevant facts including any admission or confession made by the Government servant,

(b) a List of documents by which, and a List of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the Statement of the imputations of misconduct of misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall required the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge,
or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presiding Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiry authority —

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time, within ten working days from the date
of receipt by the inquiring authority of articles of charge and the statement of
the imputations of misconduct or misbehaviour, as the inquiring authority
may, by a notice in writing, specify, in this behalf, or within such further time,
not exceeding ten days, as the inquiring authority may allow.

(8)(a) The Government servant may take the assistance of any other
Government or at the place where the inquiry is held, to present the case on
his behalf, but may not engage a legal practitioner for the purpose, unless
the Presenting Officer appointed by the disciplinary authority is a legal
practitioner or, the disciplinary authority, having regard to the circumstances
of the case, so permits.

Provided that the Government servant may take the assistance of any
other Government servant posted at any other station, if the inquiring
authority having regard to the circumstances of the case, and for reasons to
be recorded in writing, so permits.

Note :- The Government servant shall not take the assistance of any other
Government servant who has three pending disciplinary cases on hand in
which he has to give assistance.

(b) The Government servant may also take the assistance of a retired
Government servant to present the case on his behalf, subject to such
conditions as may be specified by the President from time to time by general
or special order in his behalf.
(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:—If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any
case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

Note :- The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice of discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of documents by such date as may be specified in such requisition;

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every possession of the requisitioned documents shall produce the same before the inquiring authority.

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the
public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such
documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note :- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the
evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 [but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 11], has itself inquired into or causes to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(21) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further
examination of any of the witnesses and examine, cross-examine and re-
examine the witnesses and may impose on the Government servant such
penalty as it may deem fit in accordance with these rules.

Whenever any inquiring authority, after having heard and recorded the whole or any
part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is
succeeded by another inquiring authority which has, and which exercises, such
jurisdiction, the inquiring authority so succeeding may act on the evidence so
recorded by its predecessor, or partly recorded by its predecessor and partly
recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that further
examination of any of the witness whose evidence has already been recorded is
necessary in the interests of justice. It may recall, examine, cross-examine and re-
examine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it
shall contain –

(a) the articles of charge and the statement of the imputations of
misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of
charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons therefor.
EXPLANATION:-

If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles or the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(i) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include:

- the report prepared by it under clause (i);
- the written statement of defence, if any, submitted by the Government servant;
- the oral and documentary evidence produced in the course of the enquiry;
- written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

In this Rule, exhaustive provisions have been made regarding the procedure to be followed in a domestic enquiry and in the disciplinary proceedings. In
Industry also, the procedure should be framed exhaustively and codified to streamline the system.

3. 1959 II L.L.J. 26(31) S.C.