CHAPTER - 6

Disciplinary Proceedings in NTC (MN) Ltd.
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Master & Servant relationship reveals that every servant impliedly undertakes to obey the just and reasonable commands of the mater. Under the contract of service, an employer is entitled to give order to the employee not only as to the nature of work to be done, but as per manner of its performance, and it is the duty of employee to obey all proper orders of his employer.

A breach of duty by employee is always disapproved, such disapproval being based on the purpose, which may be governed by social values such as morality, justice.’ etc..

Thus determined disobedience of disciplinary authority is a serious fault and constitutes a just cause for dismissal. Willful insubordination or disobedience of any lawful and reasonable orders of a superior officer, regarding work, service conditions etc. constitutes a grave misconduct under the Employment Standing Orders legislation warranting dismissal of the employee.

In service jurisprudence, the disciplinary Authority commands full control over the employees under its administrative control and jurisdiction. It is the disciplinary authority who examines any complaint, or decides to take su moto action, against him’ who decides whether or not to suspend him; who takes decision to prosecute him in a court of law or to take departmental action or both;; who issues the charge
law or to take departmental action or both;; who issues the charge sheet for departmental action; who appoints the inquiry officer and scrutinizes its report, and decides what penalty; if any be imposed on him. All above decisions are in his full discretion. The law of the land is that if action is taken bonafide for cogent reasons and will full opportunity of defence to the employee no court of law shall interfere in any of the above actions on merits, nor shall it appreciate the evidence collected during inquiry and finally, it can only rarely interfere in the punishment.

The rules of Disciplinary Proceedings supplement the law and do not supplant it. It thus follows that where the express provisions of the law or the rules cover a particular situation, including applicability of natural justice to that extent is included. For instance, where a statutory rule provides that a disciplinary authority may either itself hold an enquiry into the charges or appoint an inquiring authority for the purpose, the holding of the inquiry by the disciplinary authority himself shall not be barred by the rule of Disciplinary Proceedings that no person shall be judge in own case. But where the rules are silent on a point, the gap can be filled in by the rules of Natural Justice.

6.1 Study of Disciplinary Cases

Like any other organization, the National Textile Corporation Ltd. has framed their own Conduct Discipline And Appeal Rules 1975 and

\[1\] Conduct & Discipline Rules 1975 of National Textile Corporation(MN) Ltd.
approved by the Board of Directors in their meeting held on 15.09.1975 for the staff not covered by Bombay industrial Relations Act /Industrial Disputes Act, Award and Agreements) are governed by these rules. The Researcher has divided this chapter in two parts i.e. Part-I the Employees governed by Central Dearness Pay allowance and Industrial Dearness Pay Allowance and Part II covers the employees not covered under part I pay Scales are governed by Bombay Industrial Relations Act, 1947 and the agreements entered into from time to time between Mill Owner’s Association and recognized Trade Union i.e. Rashtriya Mill Mazdoor Sangh who represent Textile Industry. However, part I can be treated as white collar (executives and technicians) and Part II called blue-collar employees i.e. clerical staff and workers. They are as follows:

**Part I : Conduct Discipline and Appeal Rules 1975**

These rules are called a 'National Textile Corporation (Maharashtra North) Limited Employees Conduct, Discipline and Appeal Rules, 1975' and are implemented w.e.f. 15.09.1975. **Applicability** - Not applicable to casual employees and who are governed by the Standing Orders under the Industrial Disputes Act, 1946.

**Basic Rule** - Every employee of the Corporation should maintain absolute integrity and devotion to duty and do nothing, which is unbecoming of a public servant.

Every employee of the Corporation holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority.
Few Misconducts are given below:

The theft, fraud or dishonesty in connection with the business or property of the Corporation or of property of another person within the premises of the Corporation, taking or giving bribes or any illegal gratification, possession of pecuniary resources or property disproportionate to the known sources of income, furnishing false information regarding name, age, father’s name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of employment, acting in a manner prejudicial to the interest of the corporation, disclosing to any unauthorized person any information in regard to the process of establishment, which may come into the possession of the employee in the course of his work willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior, absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.

Further negligence of work or performance of duty including slowing down of work. The willful damage to work in process or to any property of the establishment. Interference or tampering with any safety devices installed in or about the premises of the Corporation. Drunkenness or riotous or disorderly or indecent behavior in the premises of the Corporation or outside such premises where such
behavior is related to or connected with the employment. Gambling, Smoking within the premises of the establishment. The collection without the permission of the competent authority of any money within the premises of the Corporation except as sanctioned by any law of the land for the time being in force or rules of the Corporation. Sleeping while on duty. The commission of any act, which amounts to a criminal offence involving moral turpitude. To go on an illegal strike or inciting, abetting or instigating or acting in furtherance thereof. The absence from the employee's appointed place of work without permission or sufficient cause. Purchase of properties, machinery, stores etc. without express permission of the Corporation in writing from the competent authority. The commission of any acts subversive of discipline or of good behavior. Abetment of or attempt at abetment of any act, which amounts to misconduct. To slow down the performance of work, or abetment or instigating thereof purposely.

The Employment of near relatives of the employees of the corporation in any company or firm enjoying patronage of the corporation.

No employee shall use his position or influence directly or indirectly to secure employment for any person related, whether by blood of marriage to the employee or to the employee's wife or husband, whether such a person is dependant on the employee or not.

No employee shall in the discharge of his official duties deal with any matter or give or sanction any contract to any company or firm or
any other person if any member of his family if employed in that company or firm or under that person or if he or any member of his family is interested in such matter or contract in any other matter and the employee shall refer every such matter or contract to his official superior and the matter or the contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.

**Movable, Immovable and Valuable Property**

i) No employee of the Corporation shall, except with the previous knowledge of the competent authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family.

ii) Every employee of the Corporation shall report to the competent authority within one month every transaction concerning movable property owned or entered into by him in his own name or in the name of any member of his family if the value of such a property exceeds Rs.10000/- individually.

**Suspension**

1] The appointing authority or any authority to which it is subordinate or the disciplinary authority / any other authority empowered tin that behalf by the management by general or special order may place an employee under suspension:
a) Where a disciplinary proceedings against him is contemplated or is pending; or

b) Where a case against him in respect of any criminal offence is under investigation or trial.

2] An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority, and shall remain under suspension until further orders.

3] Where a penalty of dismissal or removal from service imposed upon an employee under suspension is set aside on appeal or on review under these rules, and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

4] Where a penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of
the original order of dismissal or removal and shall continue to remain under suspension until further order.

5] An order of suspension made or deemed to have been made under this Rule may at any time be revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate.

**Subsistence Allowance**

An employee under suspension shall be entitled to draw subsistence allowance equal to 50 percent of his basic pay provided the disciplinary authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition he shall be entitled to Dearness Allowance admissible on such subsistence allowance and any other compensatory allowance of which he was in receipt on the date of suspension provided the suspending authority is satisfied that the employee continues to meet the expenditure for which the allowance was granted. In case the period of suspension exceeds six months the authority, which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months.

The amount of subsistence allowance may be increased to 75 percent of basic pay and allowances thereon if, in the opinion of the said authority, the period of suspension has been prolonged for reasons
to be recorded in writing, not directly attributable to the employee under suspension.

**Penalties**

There are two types of penalties i.e. minor and major which may be imposed on an employee, for misconduct committed by him:

**Minor Penalties:**

a) Censure; b) Withholding of increments of pay with or without cumulative effect. c) Withholding of promotion; d) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely effecting his gratuity. e) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation / Company by negligence or breach of orders.

**Major Penalties:**

a) Reduction to a lower grade or post. b) Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the employees will earn increments of pay during the period of such reduction and whether on expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay. c) Removal from service which shall not be disqualification for future employment. d) Discharge e) Dismissal

**Disciplinary Authority**

The Competent Authority will also be called Disciplinary Authority for the purpose if this rule and it may impose any of the penalties specified in Rule 23 of any employee.
**Procedure for imposing Major penalties**

No order imposing any of the major penalties shall be made except after an enquiry is held in accordance with this rule.

Whenever the disciplinary authority is of the opinion that there was grounds for enquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into or appoint any public servant as enquiring Officer to enquire into the truth thereof.

The disciplinary authority may in appropriate case/cases after recording the grounds engage a suitable retired Government Servant or retired Judge as Enquiry Officer on a fixed honorarium to act as Enquiry Officer in disciplinary proceedings.

Where it is proposed to hold an enquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with a statement of the allegations, on which they are based, shall be required to submit within such time as may be specified by the Disciplinary Authority. (not less than 4 days and not more than 15 days), a written statement whether he admits or denies any or all the Articles of charge.

On receipt of the written statement of the employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary authority itself, or by any one appointed as an Inquiring Authority provided that it may not be necessary to hold an inquiry in respect of the charge admitted by the employee in his written
statement. The disciplinary authority shall, however, record its findings on each such charge.

Where the disciplinary authority itself enquiries or appoints an Inquiring Authority for holding an enquiry, it may, by an order appoint any public servant to be known as the Presenting Officer to present on its behalf the case in support of the articles of charge.

The employee may take the assistance of any other public servant / colleague provided such public servant/colleague should not have more than two pending disciplinary cases on had in which he has to function as Defence Assistant for the purpose. The employee shall not engage legal practioner for the purpose.

On the date fixed by the inquiring authority, the employee shall appear before the Inquiring Authority at the time, place and date specified in the notice. The inquiring authority shall ask the employee whether he pleads 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 employee concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.

If the employee does not plead guilty, the inquiring authority shall adjourn, the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence.
i) inspect the documents listed with the charge sheet.

ii) Submit a list of additional documents and witnesses that he wants to examine; and

iii) Be supplied with the copies of the statements of witnesses, if any, listed in the charge sheet.

The inquiring authority shall ask the authority in whose custody possession the documents are kept, for the production of the documents on such date as may be specified.

The authority in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the inquiring authority on the date, place and time specified in the requisition notice provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Corporation. In that event, it shall inform the inquiring authority accordingly.

On the date fixed for the inquiry, the oral and documentary evidence by which the articles or 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 employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new
matter, without the leave of the Inquiry Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

Before the close of the prosecution case, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record or to cross-examine a witness, who has been so summoned.

When the case for the disciplinary authority is closed, the employee may 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 employee 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.

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

The Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for
the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

The Inquiring Authority may, after completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the employee, or permit them to file written briefs of their respective cases, if they so desire.

If the employee does not submit the written statement of defence referred to in sub-rule(3) or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these rules, the inquiring authority may hold the enquiry ex-parte.

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 inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded it necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

After the conclusion of inquiry the report shall be prepared containing a gist of the article of charges and the statement of the
imputation of misconduct, defence of the employee, assessment of the evidence & the findings on each article of charge and the reasons.

The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry.

**Action on the Inquiry Report**

The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry.

The disciplinary authority shall, if it disagrees with the findings or the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

If the disciplinary authority having regard to its own findings on all or any of the articles of charge is of the opinion that any of the penalties should be imposed on the employee.

If the disciplinary authority having regard to its findings on all or any of the article of charges, is of the opinion that no penalty it may pass an order exonerate the employee concerned.

**Procedure for imposing Minor Penalties**

Where it is proposed to impose any of the minor penalties as above the employee concerned shall be informed in writing of the
imputation of misconduct or misbehavior against him and given an opportunity to submit his written statement of defence within a specified period. The defence statement submitted by the employee shall be taken into consideration by the disciplinary authority before passing orders.

**Communication of Orders**

Orders made by the Disciplinary Authority shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

**Common Proceedings**

Where two or more employees are concerned in a case, the authority competent to impose a major penalty on all such employee may make an order directing the disciplinary proceedings against all of them may be taken in a common proceedings and the specified authority may function as the disciplinary authority for the purpose of such common proceedings.

**Appeals**

i) An employee may appeal against an order imposed upon him against the order of suspension.

ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority and should submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together
with its comments and the records of the case to the appellate authority within 15 days. The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months and pass appropriate orders within three months of the date of appeal. The appellate authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the appellate authority propose to impose is a major penalty mentioned above and inquiry has not been held in the case, the appellate authority shall direct that such an enquiry be held and thereafter consider the record of the enquiry and pass such orders. If the appellate authority decides to enhance the punishment but an enquiry has already been held, the Appellate Authority shall give a show-cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation, if any submitted by the employee.

**Review**

Notwithstanding anything contained in these rules the reviewing authority may call for the record of the case within six months of the
date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the reviewing authority proposes to impose, it a major penalty specified in rule and an enquiry as provided as per rule has not already been held in the case, the reviewing authority shall direct that such an inquiry be held in accordance with the provisions of rule and thereafter consider the record of the enquiry and pass such orders. If the appellate authority decides to enhance punishment but an enquiry has already been held in accordance with the provisions of rules, the reviewing authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into account the representation, if any, submitted by the employee.

Service of Orders, Notices etc.

Every order, notice and other process made or issued under these rules shall be served in person on the employee concerned or communicated to him by registered post at his last known address.

Part- II (Blue Collar Employees)

The following acts and omissions on the part of mill employees (covered under BIR Act ) shall amount to misconduct.

1) Willful insubordination or disobedience of any lawful and reasonable order of a superior
2] Going on an illegal strike or abetting, inciting, instigating or acting in furtherance of such strike.

3] Willful slowing down in performance of work, or abetment or instigation thereof.

4] Theft, fraud or dishonesty in connection with the employer’s business or property.

5] Taking or giving bribe or any illegal gratification.

6] Habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying sanctioned leave without sufficient grounds or proper or satisfactory explanation.

7] Late attendance on not less than four occasions with a month.

8] Habitual of any Standing order or any law applicable to the undertakings or any rules made there under.

9] Collection without the permission of the Manager of any money within the premises of the undertaking except as sanctioned by any law for the time being in force.

10] Engaging in trade within the premises of the undertaking.

11] Drunkenness, or riotous, disorderly or indecent behavior on the premises of the undertaking.

12] Habitual neglect of work or gross habitual negligence.

13] Habitual breach of any rules or instructions for the maintenance and running of any department, or maintenance of the cleanliness of any portion of the undertaking.

14] Frequent repetition of any act or omission for which a fine may
be imposed under the payment of wages act 1936.

15] Canvassing for union membership or the collection of union dues within the premises of the undertaking, without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force.

16] Willful damage to work in process or to any property of the undertaking.

17] Holding meetings inside the premises of the undertaking without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force.

18] Disclosing to any unauthorized persons any information in regard to the processes of the undertaking, which may come into the possession of the employee in the course of his work.

19. Gambling within the premises of the undertaking.

An employee guilty of misconduct may be –

(a) Warned or censured or

(b) Subject to and in accordance with the provision of the Payment of Wages Act 1936 fined, or

(c) (i) Punished by withholding of increment or promotion (including the stoppage of increment at an efficiency bar),

(ii) Reduced to a lower post or time scale or to a lower stage in time scale or

(d) Discharged

(e) Dismissed
Rule 22

1] The employment of a permanent employee may be terminated by fourteen days notice or by payment of thirteen days’ wages (including allowances) in lieu of notice. The wages shall be computed on his average daily earnings for the days actually worked during the previous wage period.

2] In respect of every permanent employee whose employment is terminated, an order of termination of employment shall be made in writing and signed by the Manager; and a copy thereof shall be supplied to the operative at the time of discharge. The reasons for the termination of his employment shall be recorded in writing and shall if he so desires to be communicated to him at the time of discharge, unless such communication, in the opinion of the manager, is likely directly or indirectly to lay the Manager open to criminal or civil proceedings at the instance of the operative. In cases of general retrenchment, closing down of a department or termination of service as a result of strike, no such need be given.

3] Save as other provided in Standing Order 20, a permanent employee desirous of leaving of the service of the undertaking shall give in writing fourteen days notice to the Manager.

4] If a permanent operative leaves the service of the undertaking without giving such notice, no deduction on that account shall be made from his wages, although he shall be liable to be sued for damages.
5] An operative other than a permanent employee or permanent employee on probation in a post, may leave or be discharged from service without notice or pay in lieu of notice.

6] On the employment of an employee being terminated or his leaving services, the wages earned by him and all other sums due to him shall be paid to him before the expire of the second working day from day on which such event occurs.

7] No employee can be dismissed without informing to concerned employee in writing of the alleged misconduct or given an opportunity to explain the circumstances alleged against him.

8] No order of dismissal shall be made except after holding an enquiry against the employee concerned in respect of the alleged misconduct.

9] Employee shall be given a charge sheet clearly setting forth circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by his representative under Section 30 of the Bombay Industrial Relations Act, 1946. Except for reasons to be recorded in writing by the officer holding the inquiry, the employee shall be permitted to produce witnesses in his defence and cross-examine any witnesses on whose evidence the charge rests. A concise summary of the evidence led on either side and the employee’s plea shall be recorded.

10] An employee against whom action ‘discharge’ ‘dismissal’ is
proposed to taken may be suspended pending the holding and completion of enquiry or for the period, if any, allowed him for giving his explanation. The order of suspension may take effect immediately on its communication to the employee. If as a result of the enquiry or explanation tendered, it is decided not to take such action he shall be deemed to have been on duty and shall be entitled to full wages and all privileges for the full period of the suspension.

11] In awarding punishment under Standing Order, the Manager shall take into account the gravity of the misconduct, the previous record of the employee and any other extenuating or aggravating circumstances that may exist.

12] An employee may be warned or censured, or, subject to and in accordance with the provision of the payment of Wages Act, 1936, fined for any of the following acts and omissions :-

a) Absence without leave or without sufficient cause;
b) Late attendance.
c) Negligence in performing duties.
d) Neglect of work.
e) Absence without leave or without sufficient cause from the appointed place of work.
f) Entering or leaving or attempting to enter or leave the
premises of the undertaking except by a gate or entrance appointed.

g) Committing nuisance on the premises of the undertaking

h) Breach of any rule or instruction for the maintenance or running of any department.

6.1.1 Study of Disciplinary Proceeding Cases

1] Shri Sarju Shivsaran Kewat, Jobber, Frame Department Vs. India United Mill No.5, Mumbai (1987):

Shri Sarju Shivsaran Kewat, Jobber, Frame Department of India United Mill No.5, Mumbai (1987) is dismissed from the services for accepting of bribe from co-workers. Shri Kewat being an active member of recognized workmen union used to accept bribe for doing their work through union. The management was in receipt of many complaints against Shri Kewat. In one of the case of accepting bribe of Rs.100/- management issued him charge sheet and the inquiry was held against him. He was dismissed from the services of the mills. Subsequently he filed a court case in Labour Court in the year 1987. Labour Court passed an order on 23.09.87 to pay him 50% back wages with reinstatement. Thereafter mill appealed against above order in Industrial Court on 26.10.87 and the Industrial Court dismissed the above order of Labour Court on 17.10.88. Therefore Shri Sarju Shivsaran made an appeal in High Court dt.28.07.89 and High Court again dismissed his appeal.

\[2\] Records/Files maintained by Personnel Department, NTC(MN) Ltd.
appeal and passed an order in favour of the management. Further he made an appeal before the bench (Committee) in the High Court and there also his appeal was dismissed on 13.09.1993. Meanwhile he requested many times to the Management for his payment of Gratuity through different authorities of recognized workmen union.

2] Shri Ramchandra Dhanawade Vs. General Manager, India United Mill No.2, Mumbai (1988):

Shri Ramchandra Dhanawade, an employee of India United Mill No.2, Mumbai and was Representative of recognized along with 10-15 employees entered into the cabin of General Manager of the mill and used unparliamentary language, threatened in dire consequences. The management decided to dismiss him from the services and the dismissal order was issued to him on very next day accordingly.

In this case the management dismissed the employee without conducting proper domestic enquiry or giving him the opportunity to defend himself, which is basic requirement of natural justice as well as code of conduct.


Shri Dadabhau Govind Kachle, Worker, India United Mill No.3/4, Mumbai is dismissed from the services after following due procedure i.e. issuing charge sheet and conducting inquiry as per the rules applicable to him. He was charged for leave without intimation to the company.
No doubt Shri Dadabhau Govind Kachle was dismissed for absent from duties without intimation to the company. But at the same time management could have condoned the misconduct considering his family background for which he had to over stay on leave i.e. sickness of his mother. Moreover the workmen being illiterate was not aware of that if he do not inform to the company he may loose his services.

However, he has not been given gratuity since major penalty of ‘Dismissed from Services’ is imposed on him and dismissed employee is not entitled for gratuity payment.

4. Shri S. V. Netke, Semi Clerk, Folding Department Vs. India United Mill No.5, Mumbai (1995):

Shri S. V. Netke, Semi Clerk, Folding Department of India United Mill No.5, Mumbai (1995) after having panchanama for carrying cloth with him with the intention of theft was issued suspended pending enquiry charge-sheet. Subsequently enquiry was held into the Charge wherein it is proved that he was carrying the said piece of cloth with the intention of theft. He himself also accepted the charges leveled against him in the charge sheet and further he requested for pardon in his statement during the course of inquiry. After the inquiry was over, the employee submitted his resignation from the services.

However, this was a clear case of major penalty ‘Dismissal from the services’ but looking to his family background and past clean records the management considered his case sympathetically and passed his resignation so that he could get service benefits.

Shri Nilkanth Deshmukh, Wvg. Jobber of RSRG Mill, Akola was charge sheeted for misbehavior with supervisor of his department in dire consequences. The inquiry was conducted in proper manner. On scrutiny of his past record during the inquiry process it was observed that Shri Deshmukh is habitual of misbehaving with his superiors. The disciplinary authority imposed major penalty of 4 days suspension upon Shri Deshmukh.

In this case the disciplinary authority did not go for major punishment of 'dismissal since Shri Deshmukh had apologized in writing and recognized workmen union also recommended his case for sympathetic consideration on humanitarian ground.

6] **Shri R. G. Bisne, Semi Clerk, Retail Shop Vs. General Manager, RBBA Mill, Hinganghat.(1998).**

Shri R. G. Bisne, Semi clerk working as Salesman (Working as Shop In charge) in the Retail Shop carried 18 bed sheets, 10 meters. White cloth and blouse pieces extra unauthorizedly while delivering the goods to Navodaya Vidyalaya Navsari, Amaravati. The excess cloth was caught by watchman on duty and suitably he was charge sheeted for the charges of misconduct applicable to him i.e. fraud and dishonesty. The charges of misconduct of theft and dishonesty, causing loss to the employer’s property and violation of lawful and reasonable orders of his
superiors were proved by the Inquiry Authority in this case. Based on the Inquiry Report the Disciplinary Authority imposed the major penalty of 4 days suspension along with removing the responsibilities of shop in charge given to him.

Shri R. G. Bisne, was involved in the serious nature of misconduct which proved in the inquiry. However, Disciplinary Authority saved the source of daily bread of the family, considering that he was the only earning member of his family though the major penalty is imposed.


Shri C. V. Reddy, Jr. Asstt.(Wvg.), RBBA Mills overstayed on leave without sanction or intimation to the company. The employee was habitual of proceeding on leave without permission or intimation to the office. The mill working was disturbed several occasions because of his absenteeism. As such he was issued charge sheet and during the inquiry Shri Reddy accepted charges leveled against him. However, he assured of non-occurrence of the incidence. The Disciplinary Authority initiated the penalty of ‘Reduce to rank & grade’ on Shri C.V. Reddy.

In this case considering that the employee had assured in writing of non-occurrence of the misconduct, the management should not have initiated major penalty of of ‘Reduce to rank & grade’ on Shri C.V. Reddy. No doubt, he was at fault but Disciplinary Authority should have gone for minor penalty like ‘warning’. This would have escaped the employee from minatory losses.

Shri S. P. Deshmukh, Sr. Asstt. Spinning Department, India United Mill No.2, Mumbai was issued charge for remaining absent from duties without prior sanction of the Competent Authority and other charges. Domestic Inquiry was held and based on the findings submitted by Inquiry Authority major penalty “dismissal” is imposed upon Shri Deshmukh by Disciplinary Authority.

During the inquiry process Shri Deshmukh was given fair opportunity to defend himself by any person. However, Shri Deshmukh did not make any efforts to save his job. He surrendered simply by accepting the charges leveled against him and the charges got automatically proved beyond any doubt.

6.2 Attendance of Disciplinary Proceedings

The researcher has attended the disciplinary proceedings to gain the practical experience which were continuing in NTC(MN) and (SM) Ltd. Mumbai and Central Cottage Industries Corporation of India Ltd. The case wise details are as follows:

1] Shri J.N. Nariyani, Manager [Costing], India United Mill No.6, charge sheet issued to him for his misconduct i.e. fraudulently enjoyed excess leave than that of his entitlement as per rule and manipulated the figures in service document.
Table 6.1

Question No.7 - Management, Charged Employees, Trade Union’s office Bearers.

Are Disciplinary Proceedings in progress in your organisation against any employee?

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>No. of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>No</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

From the above Table 6.1 we observe that the Management, Charged Employees and Trade Union’s office Bearers have agreed 100% that Disciplinary Proceedings in progress in the organisation.

1) Shri Subhash Gurav, Clerk, India United Mill No.1, Mumbai charge sheet is issued to him for misbehavior and physical attack on security staff in mill premises.

2) Shri Ashok Shinde, Sr. Manager (Marketing) and Others are issued charge sheet to him for their misconduct in giving the delivery of yarn without receiving the payment on company’s account with malafide.

3) Shri J. S. Bhatia, General Manager and Others, NTC(SM) Ltd. for their alleged misconduct in fraudulent delivery of scrap in place of Kachara in Gold Mohur Mills and Mumbai Textile Mills.

4) Shri B. S. Khandekar, and others of Podar Mills charge sheeted
for misconduct of physical attack on Mill Engineer in mill premises.

5] Shri T.E.P. Raja, Assistant Manager (Mktg), Central Cottage Industries Corporation of India Ltd. is issued charge sheet for misconduct for wrong declaration of dependant and availing medical benefit.

The detail history of above cases is given below:

1. Shri J.N.Nariyani, Manager (Costing), India United Mill No.6, Mumbai
   Shri Nariyani, Manager (Costing)
   Shri J. N. Nariyani, Manager (Costing), Podar Mill Mumbai was issued Memorandum of Charges and the list of documents on which charges proposed to be sustained and list of witnesses. Accordingly the Inquiry Officer and Presenting Officer was appointed. During the inquiry proceedings Shri Nariyani asked voluminous documents and relevant documents were provided to him.

   Shri Nariyani was given ample opportunity to to defend himself through his DA. During the inquiry proceedings Inquiry Authority acted fairly.

   The charges leveled against Shri Nariyani were proved by the management witnessess and documents presented by the presenting Officer.
Further on completion of the disciplinary proceedings the Disciplinary Authority imposed the major penalty of ‘reduction to a lower grade’ against Shri J.N. Nariyani, Manager (Costing), Podar Mill, Mumbai.

2] Shri Subhash Gurav, Clerk, India United Mill No.1, Mumbai

Shri Subhash Gurav is a mill graded employee working as a Clerk along with 20 /25 people(Outsiders) not having any connection with the mills entered the mill premises on 2nd Day of Holi in the month of March, 2007 at 1.00 p.m. The mill was having closed holiday on that day. The Security Staff did not allowed them to enter the mill premises. However, Shri Subhash Gurav accompanied by outsiders tried to open mill gate on their own but did not succeed. Then they jumped in the in mill premises while climbing the gate and beaten the security staff on duty. The Police arrested them and next day the mill management suspended Shri Subhash Gurav, Clerk under pending Inquiry. The Memorandum of Charges is issued to him for imposing major penalty for his gross misconduct. The Presenting Officer and Inquiring Officer were appointed. Shri Gurav was also allowed to represent himself with the help of defence assistant. The request of Shri Gurav was granted by Inquiry Officer to allow RMMS, (Representative union) to be his defence assistant. During the inquiry Proceedings, in one of the hearing Shri Gurav tried to mislead the Inquiry Authority that he has entered the mill premises but did not beat any security staff but
Presenting Officer presented the Security Staff those who were on duty on that particular day and time when the incident took place. As such through the witnesses, Presenting Officer established the fact that Shri Gurav had entered the mill premises on holiday along with 20/25 outsiders and beaten the security staff and a copy of FIR lodged in the Police Station and the record of arrest by Police is also produced before the inquiry authority. Therefore on the part of Presenting Officer completed evidence in favour of management when charge sheeted employee Shri Gurav was given chance to prove his innocence through documents or any witnesses if any, but he could not establish that charges leveled against him are false. Lastly he and his defence assistant admitted before the Inquiry Authority that they have done the mistake and apologized for the same.

Subsequently on completion of disciplinary proceedings Inquiry Authority has submitted the ‘Findings’ along with the documentary evidence and statement submitted by the management witnesses in the form of question-answers put up by the Presenting Officer and Defence Assistant proving the guilt / misconduct of Shri Gurav.

The Disciplinary Authority is likely to take the decision based on the ‘Findings’ submitted by Inquiry Authority.

3] Shri Ashok Shinde, Sr. Manager (Marketing) and Others, New City Mills

While working as Sr. Manager(Mktg.) in New City Mills Shri Ashok Shinde carried out 5 transactions of sale of yarn in New City Mills with
M/s K. Mahindra & Co. w.e.f. 19.10.2006 to 28.11.2006 and the delivery was given five times. The party had issued two or three cheques against each delivery and each was bounced one after another. Likewise 12 cheques of different dates drawn on ICIC Bank and UTI Bank amounting to Rs.2103495.00 (Rupees Twenty one lac three thousand four hundred ninety five only) were bounced back mentioning the reason as 'insufficient fund in account of the party and writing the wrong name of the mill'.

This is total failure on the part of Shri Ashok Shinde that without receiving the payment he has given delivery not once but 5 times whereas 12 cheques bounced by the bank one after another giving the reason that insufficient fund in party's account.

Shri Ashok Shinde was working in New City Mill as Sr. Manager (Mktg) and for giving wrongful delivery of yarn charge sheet was issued to him for imposing major penalty. The Presenting Officer presented the case with documentary evidence and Shri Shinde admitted that mistake has been carried out and delivery should have been stopped when his cheque bounced at the first instance itself. As Shri Ashok Shinde admitted the charges before the inquiry authority after noting all the points the inquiry was concluded.

4] Shri J. S. Bhatia, General Manager and Others, NTC(SM) Ltd.

1] Shri J. S. Bhatia, General Manager and Shri Jairajan, Production Manager and Shri Shridharan, Assistant Officer (Security) all from
Gold Mohur Mills were charge sheeted for their alleged misconduct in sale of scrap and delivery in Gold Mohur Mills in collusion with other employees.

2] All three officers were charge sheeted and the inquiry authority, presenting officer was appointed to inquire into the facts. During the inquiry proceedings Mr Bhatia & Others had requested for Defence Assistant which was allowed by the Inquiry Authority.

3] The Presenting Officer presented the case on behalf of management with the documentary evidence as well as through management witnesses.

4] The charged Officers were given ample opportunity to cross examine management witnesses and allowed to bring defence witnesses. After completion of cross-examination by defence assistant the presenting officer also was given chance to cross examine defence witnesses. Inquiry Officer had given ample opportunity to presenting officer and charged officer to present their case. On completion of inquiry both were asked to submit their written brief. Based on documents submitted by Presenting Officer and Charged Officer and the statement of witnesses the Inquiry Authority has given its findings stating that the charges leveled against Shri Bhatia & Others stand proved.

As Shri Bhatia was working in the rank of General Manager, hence based on the findings of the Inquiry Authority imposed
the major penalty of 'removal from service' and forwarded all the concerned documents and findings and recommendation to Central Vigilance Commission, New Delhi for advise as per rule. Subsequently they agreed with the decision of the Disciplinary Authority and accordingly the penalty was imposed on Shri Bhatia & Other -Officers involved in this case.

6.3 Study of Court Cases

The Researcher visited the Library of different courts and referred the Judgment given by Labour Court, Industrial Court, Labour Commissioner, High Court, and Supreme Court in various cases relating to disciplinary proceeding cases.

1) Beating One's Step Daughter in House (1980):

In Kakajan Tea Estate V. Labour Court, Assam and Others one Hardial Turi, a permanent workman of a Tea Estate, was dismissed from service after domestic enquiry for severely beating in his house on a certain day his step daughter Dukhmi Turi in connection with her marriage and she was taken to the hospital in an unconscious condition. The Labour Court, Assam, came to the conclusion that the above incident was purely a private incident and do not constitute misconduct as such under the relevant Standing Order. The High court of Assam and Nagaland also observed that 'the incident was purely a private affair between the father and his child, in that, the management would have nothing to do with it and that the incident would not have any effect on
the general discipline obtaining in the management’. The High Court therefore held that the dismissal for such misconduct was fully unjustified and that the Labour Court was fully justified in setting aside the order of dismissal and directing the reinstatement of the workman.

2) **Slapping a Store-keeper (1981):**

A workman was dismissed from service for slapping another employee (a Store-keeper) and thus committing an act subversive of discipline and good behaviour on the premises of the company. In the instant case, Vithoba Maruti Chavan, a head jobber in a textile mill who had put in 20 years of continuous service, was charge-sheeted by the respondent Mill on the allegation that he had slapped one Shivappa Hombal on a certain day, and thus was charged for the commission of the act subversive of discipline or good behaviour on the premises of the undertaking. On proper enquiry he was found guilty of the misconduct and was dismissed from service. The Industrial Tribunal finally confirmed his dismissal.

3) **Assaulting a Jobber (1982)**

In Vikram Mills Company case, a worker in the bleaching department of the Company was alleged to have assaulted the jobber on a particular day and thus committed a breach of discipline. The workman’s plea was that, while he was separating the two quarrelling jobbers, the said jobber might have been hit. The High Court Gujrat dismissed the appeal by the employer for the grant of permission for dismissal of the concerned workman on the ground that the malafide
intention of the management was evident in the enquiry proceedings and the same was established. The concerned workman was granted the relief or reinstatement with full back wages.

4) **Absence of Report by the inquiry Officer**

Sham Nagar Jute Factory Vs. Workmen- In this case absence of enquiry report by Enquiry Officer would introduce a serious infirmity in the domestic enquiry. In such a case the domestic enquiry could be ignored.

5) **Facts – Admitted or Proved (1986):**

Jagdish Prasad Saxena Vs. State of M.B. In this case the facts are proved and admitted and the only question is as regards the inference to be drawn from these facts, the fact that the petitioner submitted a written reply setting out the reason why the inference drawn tentatively ought not to be drawn should be considered to be sufficient and it is not necessary in such a case to make a rehearsal of recording entire evidence again.

6) **Second Enquiry (1987)**

Devendra Pratap Narayan Rai Sharma Vs. State of Uttar Pradesh – In this case it could not be contended that after an order passed in an enquiry against a public servant imposing a penalty is quashed by Civil Court, no further proceedings can be commenced against him even if in the proceedings in which the order quashing the enquiry was passed, the merits of the charges against the public servant were never investigated. When the order of dismissal was declared void and illegal
on the ground it was made in contravention of the provision of law and the merits of the charges against the public servant were not investigated, a second enquiry against the public servant in respect of same charges and suspension of the public servant pending such enquiry against him could not be considered to be incompetent.

7) **Individual charge sheet should be issued even when hundred are involved (1988)**

In the case of Gujarat Steel Tube Ltd. Vs. Gujarat Steel Tube Mazdoor Sabha – The Company had a workforce of 853. As a result of break down of the negotiation on charter of demand and also due to various factors there was a strike in factory. The company sent a notice to the union stating that “If the workmen did not report back, they would be terminated’. This notice was also alleged to have been circulated among certain workers who were available near about the factory. However, no notice was sent to individual worker.

Ultimately, when the dispute on the termination workers reached the Supreme Court, it was held that “the termination was for misconduct and therefore, there should have been an inquiry after issuing individual charge sheet specifying the misconduct of each worker. In this context the Supreme Court draw an analogy to a situation when there was arisen an murder in a village and hundred men were charged in the court with serious offence and that of convincing testimony for the offence was produced; and then the court asked whether any single member of
the violent crowd could be convicted on mass evidence, without specifying charges of participation or clear proof of constructive involvement.

8) **If the delinquent withdraws from enquiry, it can be held ex-parte**

In Imperial Tobacco Company of India Ltd. v. Its Workmen, 'Mr Akhileswar Prasad was responsible for the maintenance of the leave register in appellant company. He was charge sheeted for his willful omission to make entries in respect of different types of leave availed of by him and others. Under the Standing Orders of the appellant an elaborate procedure was provided for enquiries into charges of misconduct. From the enquiry proceedings of this case it appeared that after two witnesses were examined on behalf of the appellant there was a dispute on the cross-examination on behalf of the second witness. In consequence of this dispute Akhileswar Prasad declined to cross-examine the second witness further and withdrew from the enquiry. Thereafter the enquiry was closed and the branch manager passed the order of dismissal.

The Labour Court held that the enquiry was not completed as required the provisions in the Standing Orders and therefore the order of dismissal was invalid.

On appeal to Supreme Court by the management, the order of the Labour Court was confirmed. In the light of the different provisions in the Standing Orders of the appellant, the Supreme Court ruled that
even though the worker had withdrawn from the enquiry rightly or wrongly, the enquiry should have been completed and all evidence should be have been taken ex-parte, and thereafter it was the duty of the Branch Manager to appraise the evidence and record his conclusion as to what misconduct had been proved and also the decide what punishment he intended to inflict. Thereafter, held the Supreme Court further the Branch Manager had to ask the delinquent what he had to say against the intended punishment and it was only after taking the explanation of the delinquent that he could pass an order punishing the delinquent.

9) **Record of evidence can be by delegate if it is not prohibited understanding orders/service rules.**

In Workmen of Buckingham and Carnatic Mills, Madras V. Buckingham and Carantic Mills, Madras. On perusal of the Standing Orders the Supreme Court found that there was no prohibition in the Standing Orders limiting the powers of the Mill Manager to direct another officer to record the evidence for the purpose of taking action against a workman. The Supreme Court felt that since the Senior Labour Welfare officer had only recorded the evidence it was unnecessary form him to given any finding. The Supreme Court noticed that the evidence was considered and findings were recorded by the Mill Manager. On the question of delegation of power to take evidence the Supreme Court observed that there was no provision in the Standing Orders prohibiting
such delegation. The Supreme Court accepted the Labour Court award as correct.

10) Complainant need not always be examined

In East India Hotels V. Their Workmen and Others’ the Supreme Court found that it was apparent from the evidence before the Domestic Tribunal that Sethi had complained to Pyare Lal and Pyare Lal spoke to what the worker did and what had happened in his presence. Pyare Lal’s evidence showed that when he asked the delinquent what was in the bottle the delinquent had replied that it contained nimbu pani and that he was pouring the contents in the tub. Bakshi was also examined before the enquiry and his evidence was that he also found whisky in the gingerale bottle. Bakshi’s further evidence was that the bottle was sealed by him in the presence of Sethi, Agrawal and Pyare Lal. Agrawal who also had given evidence besides one Lal Singh. Lal Singh evidence was that when he asked the delinquent why he refused to sign the sealed bottle, he had stated ‘Hum joh espe sign karenga tab mar jayenga’. It appeared from the records that the delinquent also did not challenge this statement. The Supreme Court held that the enquiry did not suffer from any defect and there was evidence from which the impugned conclusion could be drawn, even without any evidence from Sethi.

11) Copy of statements should be given to the delinquent

In State of Punjab Vs. Bhagatram the contention of the State was that respondent was given the opportunity to cross-examine the
witnesses and during the cross-examination the respondent would have opportunity of confronting the witness with the statement, and therefore synopsis of statement would be adequate to acquaint the respondent with the gist of statement. The Supreme Court rejected this contention of the State. The Supreme Court pointed out that the object of supplying the statement is that the Government Servant will be able to refer to previous statement of the witnesses proposed to be examined against the Government Servant, and therefore, unless the statements are given to the Government Servant he will not be able to have an effective useful cross-examination. The Supreme Court ruled that this is unjust and unfair to deny the Government Servant copies of the statement of witnesses examined during the investigation and produced at the enquiry in support of the charges leveled against the Government Servant and a synopsis does not satisfy the requirement of giving the Government Servant a reasonable opportunity of showing cause against the action proposed to be taken.

12) **The enquiry officer cannot put his personal knowledge in the enquiry report**

In Delhi Cloth & General Mills Co. Ltd. Vs. Tejvir Singh the respondent was charge sheeted for taking part in illegal strike and also for inciting other workers to join the strike. Before and during the course of enquiry the delinquent had requested for time to contact his representative and witnesses, as the delinquent had to face the enquiry
in 24 hours time. He had given a written request for grant time for this purpose. However, he had not mentioned the name of his representative. The enquiry officer in his report had mentioned the name of his representative. The enquiry Officer in his report had stated that without any material on record the representative of workmen was on Baloo Mishra Kunta, working in the third shift and that he was easily available. As to how the enquiry officer got this information was not made clear from the records. And that was one of ground for dismissal of the appeal by the Supreme Court.

6.4 Interpretation of Rules & Regulations

To study the interpretation of Rules & Regulations Researcher has gone through the Disciplinary proceedings cases already completed during last one decade initiated against the employees of National Textile Corporation (MN) Ltd. available with Personnel Department of Corporate Office and different unit mills as follows:

1. **Shri B.T. Bawdhane, Badli Watchman, Vs. General Manager India United Mill No.5 (2005)**

Shri B.T. Bawdhane, Badli Watchman of India united Mill No.5 remained absent without leave over a period of one year. He was dismissed from the services & his name was removed from the muster roll without conducting inquiry as per the rule applicable to him. Suddenly after lapse more than one years period Shri Bawdhane

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reported for duty but he was denied to join the duty since he was already removed from the services. Shri Bawdhane being an ex-servicemen was admitted to Military Hospital and produced his medical certificates from Military Hospital accordingly in support of his illness. He presented himself before the disciplinary authority i.e. General Manager of the mill in the condition which clearly proved his disability due to paralysis attack and is still not able to walk independently or speak too. Moreover, he was walking with the help of relatives who brought him to the mill to be present before the Enquiry Authority.

The mill management has refused to accept his plea as already they had removed his name from the muster roll. Further Shri B.T. Bawdhane approached to appellate authority for justice. On scrutiny of the matter appellate authority advised mill management to conduct fair inquiry and then to decide the case.

In this case the employee was removed from the services without giving him proper opportunity to defend himself or follow the rules applicable to him, which is against the principle of natural justice.

Table 6.2

<table>
<thead>
<tr>
<th>S.No.</th>
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Question No. 15- Management & Trade Union’s office Bearers & charged employees and Disciplinary Authority.

Are the principles of natural justice are applied in disciplinary cases?
It can be seen from the above table 6.2 that the 56% Management & Trade Union's office Bearers & charged employees and Disciplinary Authority agree that the principles of natural justice are applied in disciplinary cases whereas 44% do not agree that the principles of natural justice are applied in National Textile Corporation(MN) Ltd.

2. **Shri Thankrajan, Jr. Assistant (SQC) Vs. General Manager, Kohinoor Mill, Mumbai (2004)**

Shri Thankrajan, Jr. Assistant(SQC), Kohinoor Mill, Mumbai proceeded on leave w.e.f. 5.10.2003 to 31.10.2003 and overstayed w.e.f. 01.11.2003 to 31.12.2004 (14 months) without approval of the competent authority. He was issued Charge-sheet for misconduct under Standing Order for remaining absent without leave or overstaying sanctioned leave without sufficient grounds or proper/satisfactory explanation. And Proper Domestic Inquiry was conducted and given an opportunity to defend himself. Based on the findings of Inquiring Authority, the Disciplinary Authority imposed major penalty of “Dismissal from Services w.e.f 01.01.2005. He made an appeal that he had to undergo the treatment without any interruption and submitted the medical certificate from time to time to the Mill management. Due to said illness he could not attend the duty and the entire enquiry proceedings and ex-parte decision is against natural justice and hence this appeal be allowed in his favour and allow to join the duty by setting aside

Though Shri Thankarajan is habitual of remaining absent
without authorized leave he has remained absent without authorized leave for 769 days during the span of 5 years his appeal is considered by Appellate Authority sympathetically purely on humanitarian grounds and it is decided to reduce the major penalty imposed of ‘Dismissal from Service’ to minor penalty of ‘Censure’ and reinstated him in the service.

Table 6.3

Question No. 11- Management & Trade Union’s office Bearers & charged employees and Disciplinary Authority.

Does employees remain absent frequently?

<table>
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<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>No. of Respondents</th>
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</table>

It can be seen from the above table 6.3 that the employees remain absent frequently @ 26% (Positive) and 74%(Negative) according to Management & Trade Union’s office Bearers & charged employees and Disciplinary Authority of National Textile Corporation (MN) Ltd. and it’s unit mills.

3. Dr. Lallan Pathak, Dy. Manager Hindi Vs. NTC(MN) Ltd.,
Mumbai (2003)

Dr. Lallan Pathak, Dy. Manager (Hindi) working at Corporate office, NTC (MN) Ltd., was suspended from the service for his misbehavior with superior officers. Subsequently a charge was issued to the officer
and ex-parte decision was taken to remove him from the services since he left the inquiry proceedings in between. During the inquiry proceedings itself he approached to Mumbai High Court for non-continuation of inquiry proceedings. The Mumbai High Court advised him to attend the inquiry and in case of adverse decision he may approach to court. But Shri Lallan Pathak did not co-operate with inquiry proceedings and the Disciplinary Authority took ex-parte decision to dismiss him from the services.

In this case there was no sufficient ground for suspending Dr. Lallan Pathak, Ex.Dy.Manager (Hindi). Instead the officer could have been warned for his mis-behavior with superior officers.

**Table 6.4**

**Question No.16 - Charged employees, Representatives of Trade Union, Management and Disciplinary Authority**

Does charge sheeted employees co-operative with the Inquiry Authority in disciplinary Proceedings ?

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>No. of Respondents</th>
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It can be seen from the above table 6.4 that the according to 81% of Managers, Trade Union’s office Bearers & charged employees and Disciplinary Authority of National Textile Corporation (MN) Ltd. and it’s unit mills agree that charge sheeted employees co-operative with the
Inquiry Authority in disciplinary Proceedings and 19% do not agree for co-operation by charge sheeted employees to I.A.


Shri Prabhat Kumar Jain, Retail Shop Incharge, RBBA Mill, Hinganghat was suspended pending inquiry for his negligence of duty, breach of trust, misappropriation of company’s property. The laid down procedure in rules applicable to the employee was followed in this case and finally Shri Jain was dismissed from the services since he was proved to be guilty of the charges leveled against him.


Shri Dukhande, Ex-Sr. Clerk, Jam Mfg. Mill, Mumbai was ‘discharged’ from the services of the mills for misappropriation of company’s funds while drawing the amount against leave encashment due in the name retired / employed employees of the mills while preparing fabricated documents. Shri Dukhande was issued the charge sheet and proper domestic inquiry was held in the case. During the inquiry process the employee had submitted that he had acted at the instance of higher officers of the mills, which could not be proved in the inquiry in the absence of documentary evidence.

At the first instance, Shri Dukhande was denied to bring the advocate to defend him. Further he approached to court and court had passed the order to allow employee to bring advocate to defend him. He
was not paid suspension allowance as per rule and again Even for suspension allowance is give to Shri Dukhande when had approached to court. Actually he should have been given the same as per rule and his eligibility. It is obvious that no officer will give the instructions in writing for mal-action by the subordinates. However, Shri Dukhande, being not educated enough to understand the strategy of higher officers in this case and finally he has been discharged from the services.

**Table 6.4**

**Question No.6 - Management, Charged Employees, Trade Union's office Bearers, Disciplinary Authority.**

Are the Employees aware of the Rules and Regulations under which they are governed?

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>No. of Respondents</th>
<th>Percentage</th>
</tr>
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<tr>
<td>1</td>
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</tr>
<tr>
<td>2</td>
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</table>

From the above Table 6.4 we observe that according to Management, Charged Employees and Trade Union's office Bearers 55% have opined that the employees are not aware of the rules and regulations under which they are governed whereas 45% feel that the employees are aware of the same.

Minor penalty of ‘Censure’ was imposed on Smt. V. D. Madhura, Telephone Operator of Model Mill, Nagpur for reimbursement of false hospitalisation medical bill of her son. On receipt of the complaint of reimbursement of fake medical bill by Smt. V. D. Madhura, Telephone Operator investigation was done by the Vigilance Department and it was discovered that during hospitalization period mentioned in the medical bill in question son of Smt. Madhura was present in the school. As such she was issued the charge sheet and the charges were proved in the inquiry. Based on the Inquiry Report, the Disciplinary Authority imposed minor penalty of ‘Censure’ upon Smt. Madhura.

In this case the management had given her fair opportunity to prove herself innocent. During the enquiry even though she was proved to be guilty of the charges leveled against her she did not agree for the same and approached to the court.


Shri D. N. Puthran, Ex-Sr. Clerk working in Cotton Department of Jam Mfg. Mills, Mumbai was dismissed from the services for misappropriation of company’s fund by allowing double payment to the private cotton party and fabrication of mill documents. Shri Puthran was dismissed while conducting Domestic Inquiry followed by due procedures.
It seems that the case was investigated with bias mind to victimize Shri Puthran since his submission in writing that the concerned bills were passed with the knowledge of competent authority is ignored by the management. Shri Puthran should have been given more opportunity to submit any evidence in the matter. In such circumstances there was possibility of some different results in this case. Moreover, he was the management witness another inquiries during his suspension period which proves his faithfulness with the organisation. In the circumstances the management could have taken little lenient view for the employee.


Shri Goratella, Asstt.Manager(Actts.) was assigned the work of rent recovery from mills quarters tenants with the help of one Jamadar, Shri Pandurang More and Shri Pitre, Jr. Clerk of the mill. During the inquiry Shri Goratella denied the charges of having used the amount collected against rent and he explained that he knew that the amount against rent was collected by Shri Pitre and Shri More and did not deposit in the mill but he failed to bring to the notice of the mill management about the same. As such his negligence, neglect of work, negligence in performance of duty including maligning or slowing down the work, acting in a manner prejudicial to the interest of mills.
Dishonesty in connection with the business or property of the mills etc. was proved in the inquiry. The disciplinary authority imposed a Major penalty of:

(a) ‘Reduced to lower stage in time scale’ upon Shri V.A. Goratella, Asstt. Manager(Actts.).
(b) “Dismissal’ upon Shri P.R. More, Jamadar.
(c) ‘Discharge from Services’ upon Shri R.P.Pitre, Jr Clerk(A/c).

In this case Shri Goratella admitted about having knowledge of collection of rent by Shri Pitre and Shri More, which was supposed to be deposited by them in the mills account. However, Shri Goratella had not used any amount owned by mills as such the Disciplinary Authority could have considered his case for minor penalty so that he would not have suffered any monetary loss.

9. **Shri Nawal Singh, General Manager Vs. NTC (MN) Ltd., Mumbai (1994)**

Shri Nawal Singh, General Manager was dismissed from the services for his involvement in purchase of spare parts / machinery from a unregistered party. An investigation was carried out and prima facie it appeared that Shri Nawal Singh did not followed the laid down procedures for purchase of spare parts / machinery. The proper domestic inquiry was held and the Inquiry Authority proved the charges. Based on the findings of the Inquiry Authority was dismissed from the services
by the disciplinary authority. However, he made an appeal to Appellate authority but the said authority confirmed the penalty imposed upon the officer. After lapse of two years period Shri Nawal Singh made a mercy appeal to Chairman-cum-Managing Director of the Corporation (his appellate authority in this case) who considered his mercy appeal sympathetically on humanitarian ground and decided to reduce his penalty from ‘dismissal’ to ‘reduce to rank and grade’. Accordingly, Shri Nawal Singh was reinstated by the management but placed him below two grades of which he was drawing immediately prior to dismissal.

Actually, in this case the Appellate Authority should have been put up the matter before the Reviewing Authority i.e. the Board of Director. The higher authority, advised the corporation to put up the matter before the Board of Directors. Accordingly the matter was placed before the Board and they rectified the decision taken by the appellate authority and maintained the penalty i.e. ‘reduce to grade and rank’ from ‘dismissal’.

Shri Nawal Singh was supposed to be reinstated in the service while reducing two grades below that of immediately prior to dismissal.

Once again Shri Nawal Singh approached to Board for his wrong fitment. He prayed to the Board that while reducing to lower grade and post he should have been given one grade lower than that of what he was drawing prior to dismissal.
In this case the appellate authority crossed the jurisdiction laid down in the procedure because he had already rejected the mercy appeal of Shri Nawal Singh. The higher authority i.e. Board of Directors should have considered the mercy appeal.

6.5. Study of Applicability Of Principles Of Natural Justice

A domestic enquiry is a quasi judicial proceeding and as such one of it's essential requirement is that the rules of natural justice have to be observed in holding it. By rules of natural justice is meant those basic principles of justice, which are framed on enquiry and reasons and without which no justice can be done eg. Both sides must be heard. It is not possible to make a complete list exhausting all the rules of natural justice. Natural Justice is derived from the old expression 'Jusnatural' i.e. justice which comes naturally to a man or which is part of his nature. Lord Asher has defined it as 'Natural sense of what is right and what is wrong'. It is well known that the elements of jurisprudence which are now regarded as the hallmark of the judicial system in civilized society were generally enforced or regarded as proper in olden times. The justice of Vikramaditya is proverbial and so was the case in the recent past during the regna of Jahangir commonly known as 'Jahangiri Insaf'. The common thread in both the systems of justice was that the King would hear the compliment first and then the person complained against before awarding any justice.

punishment. In England, the principles of British justice were based on the principles of fair play and justice. The phrase 'Due Process' has been included in the American Constitution. That 'noman should be condemned unheard' was a precept known to the Greeks, inscribed in ancient times, upon images in places where justice was administered in old times the concept of natural justice was a concept embedded in religion and philosophy. Now it is a concept of practical utility in the dispensation of justice whether by a Court of Law or a quasi-judicial tribunal or authority. The concept has, of late, permeated to the field of Administrative decision making also to some extent. Before we proceed further, let us trace the historical development of the principles of natural justice.

6.5.1 Historical Development of the Principles of Natural Justice

The Principles of Natural Justice are as ancient as man himself. Bible tells us the story of Adam and Eve, when they ate the fruit of knowledge while they were living in paradise. The story goes that God had forbidden Adam and Eve, the first man and woman, to eat the fruits of a particular tree in Eden Gardens. The Satan, however, induced them to taste the fruit which they did. When this fact came to the knowledge of God, he did not condemn them and pass sentence. God, it is so said, called upon both Adam and Eve to explain. God said to Adam, 'Where art thou? Hast thou not eaten the fruit of the tree, where of I command thee that thou, shouldest not eat' this clearly
shows that even God who is omnipresent and who knows all things did not think it proper to condemn without giving a chance to Adam and Eve to state before him their defence. This principle, 'No one should be condemned unheard' is derived from the action of God himself. Certainly there can be no better authority in the world than God.

**Position in England**

Most of the eminent judges of 17th century upheld the supremacy of Natural Justice over the Statutory Law. In Calvin's case (1608) — 7 Co Rep la (121): 77 ER 377 (391-392) — it was held that the law of nature is immutable as it came before any judicial or Municipal law. It was also held that the law of nature was infused into the heart of man before the law was written by his prophet, i.e. Moses. The view held was that even the Acts passed by Parliament, if these were repugnant to the law of nature would be void. According to this interpretation even an Act of Parliament made against natural justice and equity, as to make a man judge in his own cause, was held as void as the laws of nature were considered immutable. This position, however, underwent a radical change in the 19th century when the Courts in England held that the general principles of natural justice cannot modify the statutory law and no court can countenance a view that an Act of Parliament is not binding if it is contrary to reason or principles of natural justice. In the case of Logan Vs Bruslem in 1842 it was held that a court of justice cannot set itself above the Legislature. Further
in the historical case of Local Government Bord Vs. Alridge (1915–A 120) it was conclusively laid down that the authority of courts is purely statutory and if an Act of Parliament expressly authorize a procedure inconsistent with the principles of natural justice, than that has to be followed, because the law of parliament is Supreme. A distinction has, however, to be made in as much as that the principles of Natural Justice are applicable where the statutory law as made by Parliament is silent about the procedure. While once a view was held that the principles of Natural Justice are not construed to over-ride statutory laws.

**Position in India**

In India, which is also Common Law country, the position is slightly different. The principles of natural justice are not treated as fundamental rights and hence there is no constitutional protection unlike the ‘Due process’ in America Article 21 of the Constitution provides that no person shall be deprived of his life or liberty except according to the procedure established by law. The position as it prevails at present is that a law can be passed by the Indian Parliament violating the principles of natural justice and such law shall not be void. In India any law, which is repugnant to the express provision of the Constitution alone is struck down as void. Thus the law providing for preventive detention without trial is a valid law in India. The correct position of the principle of natural justice has been admirably stated
by the Supreme Court in the case of A. K. Kariapak Vs. the Union of India. The Supreme Court has observed, ‘the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice, these rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it whereas the duty of the courts, quasi-judicial tribunals or authorities is to follow the law as enacted by the legislature, they are not debarred from reading into it the principles of natural justice if these can be read in consonance with the provision of the law. If, however, the law provides for a procedure which excludes the principles of natural justice either by a specific provision or by implication, these principles cannot be read into the law by the courts/quasi-judicial tribunals or administrative authorities.

**Principles of Natural Justice**

1] Audi alteram partem' which denotes 'hear the other party' or in other words 'no one shall be condemned unheard'.

2] Nemo debat esse judex in propria causa' meaning that no one shall be a judge in his own cause.

3] The final order must be a speaking order.

4] The decision must be made in good faith i.e. justice should not only be done but should manifestly appear to have been done.
First Principle

The first principle of natural justice, i.e. ‘Audi alteram partem’ (hear the other side) means that no person shall be condemned unheard. A natural corollary of this principle is that the party against whom the proceedings are launched should have reasonable notice of the case he is called upon to meet. The reasonableness of the notice is a question of fact to be ascertained in each case. However, notice implies that the person concerned is not only informed of the allegations against him but also the evidence supporting the allegations. The other requirement is that the person should be given a fair chance of being heard and allowed to rebut or explain the allegation leveled against him. This he can do, only if, he is allowed to cross examine the witnesses produced in support of the allegations, produce witnesses and documents in his own defence. In short he should have a fair opportunity to state his case and to meet the allegations made against him. This principle of natural justice also imposes another restriction that no evidence shall be recorded at the back of the party. But if a party fails to avail of the opportunity afforded to it of fair hearing because of its own willful omission or neglect, then it is debarred from pleading that the principles of natural justice have been violated in its case. In T. R. Verma’s case, the Supreme Court has laid down the following three conditions, which if satisfied, would amount to reasonable opportunity having been afforded :-
a) The adjudicator should receive all the relevant material which a party wishes to submit in his support.

b) The evidence of the opponent whether oral or documentary should be taken in his presence.

c) Each party should have the opportunity of rebutting the evidence of the other by cross-examination or explanation.

If the above conditions are met, the principles of natural justice are deemed to be complied with substantially.

**Second Principle**

The second principle is that no one shall be a judge in his own case necessarily implies that the tribunal or the judge must be impartial and without bias. The judicial or quasi-judicial authority should not only himself not be a party but also not be interested as a party in the subject matter of the dispute which he has to decide. Judges like Caesar's wife, should be above suspicion. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is therefore, clear that a decision of a tribunal is vitiated by the mere fact that an interested person sat at the hearing. In case of A.K. Kariapak Vs. the Union of India, the Supreme Court accepted the plea of the petitioner that the selection was vitiated because one of the persons on the Selection Board was himself a candidate for the post for which the Selection was held. In such a case the bias of the Selection Board was obvious.
order that a judge or quasi-judicial authority should be impartial it
must be free from bias of any kind.

KINDS OF BIAS

Bias is of three kinds namely, (I) Pecuniary bias; (II) Personal
bias and (III) Bias in the subject matter of official bias.

Pecuniary Bias

A pecuniary interest, however slight, will disqualify the person to
be a judge in the case. Thus in the case of Air Corporation Employees
Union Vs. Vyas the proceedings were held invalid because the
Chairman of the arbitrators had accepted the hospitality of the
Air Corporation on an inaugural flights. Similarly, shareholders in a
Railway Company were held to be disqualified from hearing charges
against ticket less passengers even though the interest of each share­
holder was less that one fourth of a pence. However, mere trusteeship
of a friendly society would not constitute a pecuniary interest to
disqualify a trustee.

Personal Bias

A judge may sometime have personal bias towards a party
owing to relationship and the like or he may be hostile to a party as a
result of events happening either before or during the trial. Whenever,
there is an allegation of personal bias it should be seen where there is
in the mind of the accused a reasonable apprehension that he would
not get a fair trial. The test, therefore, is that there should be a reasonable
likelihood of bias. The phrase reasonable likelihood has been defined by the Supreme Court in the case of R. Parthasarthy Vs. State of Andhra Pradesh (AIR 1973-SC-2701) by observing that reasonable likelihood would be assumed if in the mind of a reasonable man there is a suspicion that there is a likelihood of bias.

**Bias in Subject matter**

The bias in subject matter or official bias must be the specific. Thus a judge should not try a case in which he has examined himself as a witness. In the case of State of U. P. Vs. Mohd. Nooh (AIR 1958 SC 88) the facts were that Shri Modh. Noor was proceeded against departmentally. The Inquiry Officer appointed to inquire into the truth of the allegations acted as a witness. The Supreme Court held that he could not act as a witness. The Supreme Court held that he could not be judge and the witness at the same time. The mere general interest in the general object to be pursued would not disqualify the judge. Thus in the case of R. Vs. Deal Justices (1981) m45 L.T. 439 (441), it was held that a Magistrate who subscribed to the Society for Prevention of Cruelty to Animals was not thereby disqualified from trying a charge brought by that body, of cruelty to a horse. In all the above cases of bias, the party is required to raise the objection of bias at the earliest possible opportunity. Thus, if a party who with full knowledge of the facts constituting bias, does not raise the objection, it will be assumed that the party has expressly or
impliedly waived his right. In these circumstances, the objection if raised later has to be overruled.

**Third Principle**

The third principle of natural justice demands that the final order should be a speaking order. A speaking order is one which contain the reasons for the conclusions reached. Now whether the judge has considered the evidence before him or not can only be ascertained if the final order is a speaking order, in the case of Bhagat raja Vs, Union of India (1967) Z SCP 302it has been held that if an order does not give any reasons, it does not fulfill the elementary requirements of a quasi-judicial process. Similarly, in the case of M.P. Industries Vs. Union of India (AIR 1966 SC671) a plea was taken before the court that giving reasons might involve delay Rejecting this contention, the Court observed:-

'The least a tribunal can do is to disclose its mind as disclosure guarantees consideration. The condition to give reasons minimizes arbitrariness, it gives satisfaction to the party against whom the order is made, and it also enables an appellate or supervisory court to keep the tribunals within bounds'

**Fourth Principle**

The principle that the decision must be made in good faith is derived directly from the principle that no one shall be a judge in his own cause. It presupposes the impartiality of the judge and that he
should be without any bias. The decision must be made in good faith implies that the judge has bestowed due consideration to the facts and evidence adduced during the trial or enquiry. That he has arrived at the decision must be made in good faith implies that the judge has bestowed due consideration to the facts and evidence adduced during the trial or enquiry. That he has arrived at the decision without favour to any of the parties that the Inquiry Officer has followed the procedure in such a manner that justice is not only done but manifestly appears to have been done.

Applicability of the Principles of Natural Justice to Disciplinary Proceedings in NTC(MN) Ltd. & its Mill Units

The principles of natural justice are imported into the disciplinary proceedings by virtue of the provision of Article 311 (2) of the Constitution of India. The Article 311 (2) provides for ‘reasonable opportunity’ being given to the charged govt. servant before imposing on him the penalty of dismissal, removal or reduction in rank. However, reasonable opportunity has not been defined in the Constitution and hence, the principles of natural justice become applicable during the departmental inquiry. It would thus be necessary to appoint an impartial enquiring authority to enquire into the charges against the Govt. Servant. A prosecution witness or a person, who has any kind of bias cannot be appointed as an Inquiring
Authority. It is also necessary that fair opportunity be provided to the charged govt. Servant during departmental inquiry to enable him to put fourth his point of view comprehensively before the enquiring authority with the aid of oral and documentary evidence. The final report of the enquiring authority as well as the final order of the disciplinary authority imposing a penalty has to be a speaking order.

The principles of natural justice are applicable to judicial and quasi-judicial proceedings, unless their operation is ruled out by the specific and positive provisions of a statute or law or by its necessary implication. These rules are not applicable in respect of purely administrative orders which are rested on subjective discretion, but may be applied where the administrative orders which are rested on subjective discretion, but may be applied where the administrative authority is called upon to decide objectively or where its decision is likely to effect the other party prejudicially to a great extent. These principles are intended to ensure fair play and justice or to avoid miscarriage of justice. Some of the commonly recognized principles of natural justice are :-

a) Here the other party or no one should be condemned unheard.
b) No one shall be judge in his own cause.
c) The final order must be a speaking order.
d) The decision must be made in good faith.
The requirements of Natural Justice have been summed up admirably by the Madras High Court in the case of G. Gabriel Vs. State of Madras (1959)-2 MLJ 15 (Mad HC) in the following terms:

“All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards. One is that a person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that a person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stages of the enquiry, but also dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusions must be rested on the evidence and not on matters outside the record. And, when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on the misreading of the evidence. These requirements are basic and cannot be whittled down, whatever be the nature of the enquiry whether it be judicial, departmental or other. However, where the enquiry is judicial, we insist that yet another requirement should be complied with, that is contained in the familiar statement that it is not sufficient that justice is done but that justice should also manifestly appear to be done. The civil procedure code and Indian Evidence Act laid on several rules of natural justice. In fact in a broader sense it can be said that the rules laid down in
CPC and Evidence Act are all rule of natural justice because they are all based on reason or equity and their aim is to do justice. In the narrower sense however the CPC and Evidence Act can be divided into basic rules of natural justice and technical rule of procedure. Thus section 80 of the CPC which provides for sixty days notice for filing suit against Govt. is not strictly speaking a rule of natural justice, for injustice need not necessarily occur if the provision is not complied with. In the broader sense, however, this provision too can be called a rule of natural justice, because the state stands of different footing from the individual and may not able to proper defend itself without sufficient advance notice.

A criminal rule of natural justice is that no man should be a judge in his own cause. Any kind of bias, pecuniary or otherwise disqualify the person from acting as Enquiry officer, for justice requires that justice should not only be done but should also appear to be done. Thus if the enquiry officer himself is a victim of the assault for which the workmen has been charge sheeted the rules of natural justice disqualify him from acting as a enquiry officer. Similarly if it can be shown that the enquiry officer has given some monitory or other temptations to decide against the workmen his findings will be vitiated as they will be biased. Even a reasonable apprehension of bias is sufficient though bias is not actually proved.
A domestic enquiry in the absence of any statutory rules must be conducted fairly and impartially. Fairness and impartiality are embedded in the rules of natural justice, which should inform every aspect of enquiry.

Rules of natural justice are not codified rules of law. They are uncodified rules of justice brought into play to satisfy the morale and sense of social justice.

Natural justice has acquired a logistic and artistic meaning by passage of time. In the recent past the principle of natural justice such as Audi Alteram Patrem (no man should be condemned without being heard) have been evoked in the proceedings before the judicial on quasi judicial tribunal. The principle of the natural justice appear to be equally applicable even in a case where an administrative decision is taken be a statutory functionary. Failure to adhere to such principles should result in a decision which is nullity because of total absence of jurisdiction.

Table 6.5

Question No.15 - Charged employees, Representatives of Trade Union, Management and Disciplinary Authority

Are the principles of natural justice are applied in disciplinary cases?

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>No. of Respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>18</td>
<td>67</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>9</td>
<td>33</td>
</tr>
</tbody>
</table>

It can be seen from the above table 6.5 that the according to 67% of Managers, Trade Union’s office Bearers & charged employees and
Disciplinary Authority of National Textile Corporation (MN) Ltd. and its unit mills agree that principles of natural justice are applied in disciplinary cases and 33% have answered in negative manner.

The disciplinary proceeding cases in National Textile Corporation (Maharashtra North) Ltd. that are in progress are attended and the system following is studied thoroughly. The disciplinary proceedings can be summarized in the following chart.

Thus we can easily understand after above discussion and cases that before effecting the punishment one must go through and follow the below mentioned procedure:

- **INQUIRY PROCEEDINGS**
  - MISCONDUCT
  - PRELIMINARY INQUIRY
  - SHOW CAUSE NOTICE
  - EXPLANATION FROM WORKER
  - CHARGE-SHEET
  - APPOINTMENT OF INQUIRY AUTHORITY
  - APPOINTMENT OF PRESENTING OFFICER
  - HEARING BEFORE INQUITY AUTHORITY
**Required**

- Presentation of documents relied upon by presenting officer
- Charges readout by IA to charged employee denial or acceptance of charges by CO.
- Copies of documents to be handed over to charged employee.
- List of documents to be handed over to charged employee.
- List of documents and witnesses by CO may be submitted to IA.
- Request to IA by Co to bring Defence Assistant.
- Chief in examination by Presenting Officer.
- Cross examination by CO/DA.
- Presenting Defence witnesses and examination by Charge sheeted employee.
- Cross examination by Presenting Officer.
- Submission of written brief by Presenting Officer to IA and copy to charged Employee.
- Written brief submission by Charged Employee to Inquiry Authority.
- Findings of IA to be submitted to Disciplinary Authority.
- Second Show Cause Notice to charged employee.
- Penalty to be imposed by Disciplinary Authority.
FORMS

It is not necessary each word of the form should be strictly adhered to in all circumstances. Minor modification could always be made in accordance with the circumstances relating to disciplinary case in which these forms are to be used. The expression 'undersigned is directed' can be replaced by the expression 'the undersigned forwards herewith or encloses a copy of the enquiry reports'.

ANNEXURES

Standard format of order of Suspension

No
National Textile Corporation (MN) Ltd.
Apollo House 15 N.M. Joshi Marg,
Chinchpokli, Mumbai 400 015.
Place of Issue--- Date ---

ORDER

Whereas a disciplinary proceedings against Shri ----------- is contemplated pending.

Now, therefore, the undersigned (The Appointing Authority OR an Authority to which it is subordinated OR any other authority empowered by the Disciplinary Authority), in exercise of the power conferred by CDA Rules 1975 amended from time to time of NTC(MN) Ltd., Mumbai hereby place the said Shri ----------- under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri ----------- should be -----------(Name of Place) and Shri ----------- shall not leave the headquarter without obtaining the previous permission of the undersigned.

(X.Y.Z.)

Name and designation of the suspending authority / Disciplinary Authority

Copy to:
1. Shri ----------------- (Name and Designation of Suspended employee) orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately).
2. Shri ----------------- (Name & Designation of appointing Authority) for information.
3. Shri ----------------- (Name & Designation of Lending Authority) for information
Standard form of Charge sheet for Major Penalty

(CDA Rule 1975 of NTC(MN) Ltd. Mumbai)

No—
National Textile Corporation (MN) Ltd.
Apollo House 15 N.M. Joshi Marg,
Chinchpokli, Mumbai 400 015.

Date ———

MEMORANDUM

The undersigned propose to hold an inquiry against Shri ————under Rule ___ of the CDA Rule 1975 of NTC(MN) Ltd., Mumbai. The substance of the imputation of misconduct or misbehavior in respect of which the inquiry proposed to be held is set out in the enclosed statement of Article of Charge (Annexure-I). A statement of imputation of misconduct or misbehavior in support of each article of charge is enclosed (Annex-II). The list of documents by which, and a list witness by whom, the Article of Charge are proposed to be sustained are also enclosed (Annex-III & IV).

2. Shri ———— is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desire to be heard in person.

3. He is informed that an inquiry will be held only in respect of those article of charges as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri ———— is further informed that if he does not submit his written statement of defence on or before the day specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fail to refuse to compliance with provision of Rule — OR the Order / direction issued in pursuance of the said rule. The inquiry authority may hold the inquiry against him ex-parte.

5. Attention of Shri ———— is invited to Rule — of CDA Rule 1975 of NTC(MN) Ltd. Under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matter pertaining to his service under the corporation. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings will be presumed that Shri ———— is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule — of CDA Rule 1975 NTC(MN) Ltd.

6. The receipt of the memorandum may be acknowledged.

(XYZ)

Name and designation of Competent Authority / Disciplinary Authority.
Annexure-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI ————(Name and Designation of employee)

1. Where is the undersigned is the disciplinary authority.
2. The Officer in the Corporation authorized under Rule—CDA Rule 1975 NTC(MN) Ltd. To be as Disciplinary Authority.

Charge No.1
That the said Shri ———— while function as ———— during the period ————.

Charge No.2
That during the aforesaid period and while functioning in the aforesaid office the said Shri ————

Charge No.3
That the during the aforesaid period and while functioning in the aforesaid office the said Shri ————

Annexure II

Statement of imputation of misconduct or misbehavior in support of the articles of charge framed against Shri ———— (Name and Designation of employee).

Article –I, Article–II, Article –III

Annexure III

List of documents by which the articles of charge framed against Shri ———— (Name of the employee) are proposed to be sustained

A.
B.
C.
D.

Annexure IV

List of witnesses by which the articles of charge framed against Shri ———— (Name of the employee) are proposed to be sustained

1. Shri ———— (Name and designation of Witness No.1)
2. Shri ———— (Name and designation of Witness No.2)
3. Shri ———— (Name and designation of Witness No.3)
4. Shri ———— (Name and designation of Witness No.4)
Standard Form of order relating to appointment of Inquiring Authority

ORDER

Whereas an inquiry under Rule — CDA Rule 1975 NTC(MN) Ltd. Mumbai is being held against Shri ———————— (Name & Designation of the Employee) .

And whereas the undersigned consider that an Inquiring Authority should be appointed to inquire into the charges framed against Shri ——————— (Name and designation of the employee).

Now, therefore, the undersigned in exercise of the power conferred by Rule — 1975 NTC(MN) Ltd. Mumbai hereby appoint Shri ———————— (Name and Designation of Inquiring Authority) as the Inquiring Authority to inquire into the charges framed against the said Shri ———————— (Name and designation of the employee).

(Signature)

Name and Designation of Disciplinary Authority

Cc to:
Charged Employee
Inquiring Authority
Presenting Officer
Standard Form of order relating to appointment of Presenting Officer

No——-
National Textile Corporation (MN) Ltd.
Apollo House 15 N.M. Joshi Marg,
Chinchpokli, Mumbai 400 015.
Place of Issue—— Date——

ORDER

Whereas an inquiry under Rule —— CDA Rule 1975 NTC(MN) Ltd. Mumbai is
being held against Shri —— (Name & Designation of the Employee).

And whereas the undersigned consider that an Presenting Officer should be
appointed to present the case in support of Article of Charges on behalf of Disciplinary
Authority / undersigned the charges framed against Shri ———— (Name
and designation of the employee).

Now, therefore, the undersigned in exercise of the power conformed by Rule—
— 1975 NTC(MN) Ltd. Mumbai hereby appoint Shri ———— (name and
Designation of Inquiring Authority) as the Presenting Officer to present the case in
support of Article of Charges framed against the said Shri ———— (Name
and designation of the employee).

(Signature)
Name and Designation of Disciplinary Authority

Cc to:
Charged employee
Inquiring Authority
Presenting Officer
Standard format of Memorandum of Charges for imposing Minor Penalty

No-----
National Textile Corporation (MN) Ltd.
Apollo House 15 N.M. Joshi Marg,
Chinchpokli, Mumbai 400 015.
Place of issue——— Date ———

Memorandum

Shri ———————— (Name and Designation and department of) is hereby informed that it is proposed to take action against him under Rule — CDA Rule 1975 of NTC(MN) Ltd. A statement of imputation of misconduct or misbehavior on which action is proposed to be taken as mentioned above is enclosed.

2. Shri ———————— is hereby given an opportunity to make such representation as he may wish make against the proposal.

3. Shri ———————— fails to submit his representation within 10 days of receipt of this memorandum, it will be presumed that he has not representation to make and order will be liable to be passed against Shri ———————— ex-parte.

4. The receipt of this memorandum should be acknowledged by

Shri ————————

[Signature]

Name and designation of Disciplinary Authority / Competent Authority.

Copy to:

Shri ———————— (Charged employee)