CHAPTER -10
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A breach of duty by employee is always disapproved, such disapproval being based on the purpose, which may be governed by social values morality and justice.

The determined disobedience of 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 Employment Standing Orders legislation warranting dismissal of the employee.

In service jurisprudence, the Disciplinary Authority commands control over the employees under its administrative control and jurisdiction. It is the disciplinary authority who examines any complaint, or decides to take sue moto action, against him; who decides whether or not to suspend him; or to take departmental action. 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 discretion. The law of the land is that if action is taken, bonafide for reasons and full opportunity of defence to the employee should be given. No court of law shall interfere in any of the above actions on merits, nor shall it reappreciate the
evidence collected during inquiry and finally, it can only rarely interfere in the punishment imposed.

10.1 Suggestions

After studying the established procedure to conduct domestic enquiry and decisions of various courts it is felt that the below mentioned points may be taken into consideration at the time of holding Disciplinary enquiry.

10.1.1 Stages of the disciplinary inquiry proceedings must be followed.

10.1.2 The disciplinary authority should appoint a knowledgeable and independent inquiry authority.

10.1.3 Right Officer to be appointed as inquiry officer, presenting officer and competent officer should be the disciplinary authority.

10.1.4 The principles of Natural Justice should be followed in conducting inquiry.

10.1.5 Disciplinary authority should act as quasi-judicial authority and take suitable decision while applying his own mind based on documentary evidence and inquiry reports placed before him. Even if he do not agree with the report of inquiry authority he may use his own decreptive power or may order for conducting another inquiry proceedings by appointing another inquiry officer if he is not satisfied with the inquiry proceedings.
10.1.6 Employee should be given a chance to appeal against the order of disciplinary authority in case of ignorance of law if he fails to file appeal in time. Delay of time may be condoned.

10.1.7 Appellate Authority as well as Reviewing Authority also should see proper care is taken decision against the order of disciplinary authority or in favour of employee so that proper justice is made.

10.1.8 While deciding the punishment the authority concerned awarding the punishment should also have humanitarian angle considering that the employee having many dependants whose life also will be affected adversely with harsh punishment. However, disciplinary proceedings are different from that of criminal proceedings and lenient view has to be taken while imposing punishment on erring employee.

10.1.9 The management can minimize the court cases while considering the minor cases with due care and justice to the employee.

10.1.10 It is fact that the disciplinary proceedings based on rules framed by the organization based on Model Standing Orders, Bombay Industrial Act, Industrial Dispute Act but it’s implementation is more important than that of framing the rules. The management can have the angle of Natural Justice where the rules are silent on some points. Here the employees can be give benefit of doubt.
10.1.11 The penalty of 'recovery of loss' is only awarded when it is established that the employee was responsible for particular act(s) of negligence or breach of rules and that has caused the pecuniary loss to any organisation including National Textile Corporation (MN) Ltd. In such cases the disciplinary authority should correctly assess in a realistic manner the contributory negligence on the part of the employee. While determining any omission or lapses, the status and financial position of the employee the bearing of such lapses on the total suffered and the circumstances in which duty was performed should be given due weightage. It should be borne in mind that the net cumulative effect on the employee concerned should not be such a severe so as to make it impossible for him to bear.

10.1.12 Knowledge of Rules and Regulations for conducting disciplinary enquiry must be known to all the employees. Seminars / work shops should be organised for bringing awareness of such knowledge.

10.1.13 Code of Conduct should be known to all employees while displaying it on notice board.

10.1.14 The employees should be informed about the working hierarchy, so that they can understand the working system of organization.
10.1.15 The National Textile Corporation being a textile industry should adopt higher and fire policy on engagement of workforce for survival in the competition era of globalization & liberalization.

10.2 Conclusions

The Researcher after studying the rules and regulations applicable to different categories of employees in National Textile Corporation (MN) Ltd., and its' unit mills with regard to code of conduct to be followed by them and in case of violation, a long procedure to be followed, to punish the employee is called disciplinary proceedings. The conclusions drawn are as follows:

10.2.1 The principles of Natural Justice plays a vital role in domestic enquiry without which the entire disciplinary proceedings is vicious. Often the employer punishes the workman without following the established rule of domestic enquiry and principles of natural justice and their act is declared bias by judicial courts.

10.2.2 It is observed that the punishment awarded by the employer is not commensurate with the misconduct committed by the employee. This should be avoided.

10.2.3 The Govt. of India should act as patronisers and not as punishers. They should not allow to punish the working community for small mistakes or mistakes which do not directly affect the
productivity of the organisation. Instead of punishing the workers the Govt. of India should find out ways and means to improve the lot of the workers which are a depressed society.

10.2.4 Industrial tribunals as well as the High Courts and Supreme Court have attempted to evolve fair, just and equitable principles governing the sensitive area of industrial jurisprudence. The management should follow these directives in tooth and nail for imparting social justice to the employees.

10.2.5 The Researcher has analyzed in the different chapters of her study, the different principles judicially evolved in regard to dismissal consequent on misconduct in various industries including National Textile Corporation(MN) Ltd. and its unit mills and in some places comments are made on decisions of disciplinary authority and judicial cases where the Researcher thinks that they have gone either too far or have not gone far enough. The researcher feels that punishment awarded to the employees are either too hard or too soft. In some cases the researcher feels that while awarding the punishment humanitarian approach should be followed so that the families of the workers are not punished for no fault of theirs.

10.2.6 As a model employer National Textile Corporation (MN) Ltd. has to observe all the laws of the land in dealing with employee’s right from their recruitment to retirement.
10.2.7 They have to treat their employees differently from the private sector. Because NTC (MN) Ltd. has the moral responsibility towards the public with whom they come into the contact in their public dealings. The public sector has social moral responsibility towards it’s workers. The NTC (MN) Ltd. being a public sector should remember the social aspect while dealing with it’s workers. It should not deal in with it’s workers at par with the workers in private sector.

10.2.8 The National Textile Corporation (MN) Ltd. is bound by severe restraints in handling its employees and is mainly guided by the provisions of the Constitution of India in such matters. It has come to the notice of the researcher that these provisions are not properly followed. sometimes under the political pressure they ignore this provision. They should not be done because the provision of Constitution of India are above any individual.

10.2.9 It has to dispense with justice and fair play and avoid discrimination. At the same time, it is obligatory to the public, the NTC Ltd. has to ensure that the employee behave themselves. Enforce discipline and promote loyalty for the sake of smooth conduct of public administration, prevent corruption practice to punish errant employee through appropriate disciplinary measures. It is obligatory on the part of the
employees to behave properly. The NTC (MN) Ltd. has to enforce
discipline and promote loyalty for the sake of smooth conduct
for public administration. It has to prevent corrupt practices and
to punish errant employees through appropriate disciplinary
measures.

10.2.10 The institutions of disciplinary proceedings are also vulnerable.
However, the institution of disciplinary proceedings should see
that while adopting strict norms of justice hard punishment
should not be inflicted on the wrong doer for small cause and
the wrong doer should not be escaped from hard punishment
for committing a mischief which directly hits the production of
the organisation.

10.2.11 The punishment must be proportionate to the misconduct
committed by an employee.

10.2.12 In every case, competent right officer has to order proceedings,
the right officer has to conduct the inquiry. The right officer
has to make the decision so that there is not charge of
arbitrational.

10.2.13 The right of the appeal has to be honored. The Govt. or NTC
cannot afford to have its proceedings or findings set aside in a
Court of Law.

10.2.14 The court cases cannot be allowed to be dragged on endlessly
to ensure fair trial and speedy decisions.
10.2.15 The National Textile Corporation (MN) Ltd. has set up their own Code of Conduct and have framed their own rules and system for conducting disciplinary proceedings and give proper opportunity to charged employee to defend himself.

10.2.16 The law of departmental inquiry and disciplinary proceedings has undergone radical change today. What was considered as an administrative power some times ago is now looked upon as a quasi-judicial power of the administrative body. It has become necessary to provide guidelines for just exercise of their power. The researcher feels that their should be proper control over proper implementation of these rules strictly. These rules should be uniformly applied to all the workers without any discrimination.

10.2.17 To prevent the abuse of power and to see that it does not become a new despotism the courts have gradually evolved certain principles to be observed while exercising such powers.

The Supreme Court in one of the cases i.e. Managing Director, ECIL Hyderabad Vs. V. Karunakar in constitution bench while dealing with the disciplinary proceedings has pronounced a land mark judgment setting at rest the issues that arose during the dispensation of disciplinary proceedings.

The Supreme Court in the above said case held that the proceedings break into two stages when an inquiry officer is
appointed. The first stage ends when the disciplinary authority arrives at its conclusion on basis of the evidence and the second stage begins when the disciplinary authority decides to impose the penalty on the basis of evidence.

10.2.18 Similarly, the Supreme Court held that employee has two rights. The first right is to prove innocence and the second right is to plead for either no penalty or lesser penalty although the conclusion regarding guilt is accepted.

10.2.19 Administrative decisions, quasi-judicial decision, though comply the principles of natural justice to some degree or the other depending upon the nature of exercise of judicial functions, it is true that difference between administrative decisions and the quasi-judicial decisions have become thin.

10.2.20 The day has come that even the administrative decision requires compliances of natural justice to appear logical and justified.

10.2.21 The Supreme Court has off late pronounced various trend-setting judgments upholding the jurisdiction of disciplinary authority and also requiring therein the humanizing principles of natural justice.

10.2.22 Supreme Court confirms the settled position of law that the court is not a court of appeal to go into questions of imposition of punishment. The Supreme Court felt that it is for disciplinary authority to consider what would be the nature of punishment to be imposed.
10.2.23 Based on the above past and present disciplinary proceeding cases and judgments delivered by the different courts mentioned above it is fact that the principles of natural justice is to be given to the delinquent employee to prove his innocence. The disciplinary authority should not be bias, he has quasi-judicial powers and he should act impartially based on facts and findings produced before him by the independent inquiry authority. He should commensurate punishment with the misconduct proved against the erring employee.

10.2.24 The other authorities should not influence the disciplinary authority and the remedy available to the employees to be informed accordingly so as justice is made available at the level of appellate and reviewing authority.

10.2.25 In case proper justice is not meted out to the erring employee he may approach to the court where both employer and employee have to meet lot of expenses and it is time consuming process.

10.2.26 The employers are required to deal with the claims of the employees for better working conditions and for better wages and terms of employment which would enable them to meet their obligations to themselves and their families and to deal with all problems in industrial life with imagination, sympathy and understanding.
10.2.27 The employees are required to remember that without their whole-hearted co-operation any industry including National Textile Corporation (MN) Ltd. can not increase their productivity and without adequate production the economic growth is far cry in the wilderness.

10.2.28 The Inquiry Officer is not the prosecutor. It is not his duty to somehow prove the charge. It is not for him to assume that the accused employee is guilty and to obtain admissions from him.

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