CHAPTER – 4
Research Methodology
4.1 Selection of Research Topic

In the interest of maintaining good order and discipline in the establishment an employer has inherent right to suitably punish a delinquent employee. However, with the emergence of modern concepts of social justice, this inherent right has come to be subjected to certain restrictions as to protect an employee against any sort of vindictive or capricious action. The employer is, therefore, required to follow certain principles and procedures before he can award any punishment to his employee. It is very essential that the correct procedure is followed by the employer to ensure that his punishment order is not upset, later on, by any Industrial Tribunal on technical grounds, should it be made the subject matter of an industrial dispute. Except to a certain extent, in the Industrial Employment (Standing Orders) Act, 1946 there is little or no specific provision in any statute relating to Industrial law in this country prescribing in detail the correct procedure. As such procedure should be followed before awarding punishment to an employee. However, in recent years there has been a gradual emergence of a body of principles resulting from the decision of the as various Industrial Tribunals as well as High Courts and the Supreme Court indicating the basic formalities to be observed and the correct procedure
to be followed by the employer in such cases. These principles are fairly well established and an attempt has been made in this research to explain these principles and their practical application in detail as far as possible.

One of the important functions of the present-day practicing manager is the handling of disciplinary matters relating to his subordinates. With by-gone times of the freedom to hire and fire and the emergence of the principles of natural justice, coupled with the legal technicalities which have unwittingly created inroads in the area of managerial discretion, this otherwise simple function is becoming increasingly complicated day by day. Inevitable as it is, disciplinary action would continue to be a routine feature in the working life. It is therefore, imperative that the manager is fully aware of the principles governing such actions and the correct procedures to be adopted in respect thereof. In conducting domestic enquiries, in particular, procedural aspects, unintentionally though, have attained paramount importance. The manager is, therefore, required to be fully conversant with such procedures. Ignorance of or laxity in observing the correct procedures may lead to the disciplinary action taken being reversed by an Industrial Tribunal, should it become the subject matter of an industrial dispute. Non-observance of the elementary principles of natural justice may result in an employee being subjected to gross injustice, affecting the employee morale in an organisation. A thorough study of this subject is, therefore a must for every employer / employee.
The Researcher has made efforts to impress upon the salient features of disciplinary action in general, and domestic enquiry in particular by bringing out research of this subject. Since the purpose of this research is to be acquainting with the broad principles and procedures required to be followed, reference to case law has been made. Due consideration has been given to the observations and pronouncements of various judicial authorities.

National Textile Corporation (Mah. North) Ltd., & It's 8 unit mills spread all over the Maharashtra including mills located in Akola and Hinganghat in Vidarbha Region provide the employment to near about 4000 workers and the modernization is in progress w.e.f. 2004.

The Voluntary Retirement Scheme is implemented while giving benefit to 5129 workers/staff/officers. Naturally like any large organisation where so many workers are working, disputes/ misunderstanding/unfair labour practices/interference of union as well as interference of political leaders NTC (MN) Ltd. also is bound to face abovementioned problems, which ultimately lead to disciplinary proceedings against the employees. Moreover, most of the workers are illiterate and poor who are not aware of the rules and regulation of day-to-day working, Code of Conduct, Model Standing Order and so on. Even they are not aware about their own rights, which give way to misguidance by union leaders for their own benefits. The workers do not have the knowledge of various statutory labour laws framed for their protection and social security.

1 NTC(MN) Ltd., Mumbai Annual Report Manpower Position for the period 2004-05
Some of them are thrown out of service for no fault on their part as a result of their illiteracy and unawareness of law, including applicability of natural justice in disciplinary proceedings.

Considering the large number of employees employed by NTC (MN) Ltd. Mumbai and that too most of them are illiterate, it is obvious that there would be problem in day-to-day working. As such to maintain cordial harmonious relations between management and workers / trade union, some disciplinary proceedings cases are likely to be initiated against the employees. Therefore it is felt that this is very interesting subject and to educate the illiterate workers about their duty, responsibility and their rights vi-a-vis their act of Omission & Commission of misconduct and to protect themselves using the shelter of conduct & discipline rules framed by the corporation as well as updating the knowledge of natural justice, in case, the management try to remove them from the service / harassment / unfair labour practices.

Taking into consideration this aspect, it was felt that 'Disciplinary Proceedings in Textile Industries of National Textile Corporation (MN) Ltd., Subsidiary of National Textile Corporation Ltd. (A Govt. of India Undertaking) would be a topic of great interest.

One of the principles which was evolved by Labour Law's was that before punishing an employee for misconduct there must be domestic enquiry – a trial – in which employee should be given a fair
opportunity of putting up his defense. As the Supreme Court said in dealing with the industrial disputes under Industrial Dispute Act and other similar legislation, Industrial Tribunal, Labour Court, Appellate Tribunal and finally this court have by a series of decision laid down the law that even though under contract law pure and simple, and employee may be liable to dismissal without anything more, Industrial adjudication set aside the order of dismissal, was made without a proper and fair enquiry by the management was made bide or against the principles of natural justice or amounted to unfair labour practices. In case of industrial workers the reason for laying down the rules that they can be dismissed or otherwise be punished only after enquiry, is that society requires industrial peace so that the production may not be hampered. If the worker is arbitrarily punished for undisclosed reasons there may be unrest and friction, which is undesirable. It is therefore in the interest of the industrial peace and production that workers should be punished only after they have been given a fair opportunity of defending themselves.

4.1.2 Scope & Limitations

The purpose of Domestic Enquiry is mainly to find out the truth of allegations made against the employee. Though it is not a judicial enquiry it is a quasi judicial enquiry of the judicial proceedings i.e. the enquiry officer as a presiding officer the presenting officer as a prosecution and another employee representing the case on behalf of
the accused workman is called defense assistant. Then follows the examination of witnesses and cross-examination by the accused workman or by the employee assisting him re-examination, cross-examination, re-examination of the defense witnesses. The purpose of this enquiry is two folds i.e. firstly to give delinquent workman an opportunity to make a statement against all charges which are made against him as well as to examine any witness in his defense and to cross-examine the prosecution witnesses and secondly, to give the employer an opportunity to assess the merits of the cases from the findings of the enquiry officer as well as the evidence and records procedure followed in the case and to reach his own conclusions as to the guilt of the accused and thereafter to decide the quantum of punishment to be imposed on him.

The Disciplinary Proceedings are not therefore an empty formality on which depends the future of the workman. A great care has therefore to be taken to conduct the enquiry with all fairness. Though it is based on the rules of criminal trial i.e. on the strict rules of evidence, it must be conducted on the rules of Natural Justice and fair play. In short all the reasonable opportunity have to be given to the accused workman.

The research subject 'Disciplinary Proceedings in Textile Industries of National Textile Corporation (MN) Ltd., Subsidiary of National Textile Corporation Ltd. (A Govt. of India Undertaking) is a serious attempt to analyze the various facets and specificities in
the subject of industrial jurisprudence with a special reference to disciplinary action in industry services. The basic principles of industrial jurisprudence are well stated (i) that all labour legislation must be conceived as social legislation (ii) that all contractual obligations should be regulated by industrial law and not by contract law and (iii) that principles of social justice must be operative in the implementation of labour legislation, its basic components being to fit it in the words of the late Chief Justice of India Dr. P. B. Gajendragadkar, Justice, enquiry and good conscience.'

The object of holding domestic enquiry is to afford the charge-sheeted employee proper and adequate opportunity to refute the evidence brought against him and thus defend his case and prove his innocence at a fair hearing. However, an enquiry cannot be said to be fair unless the employee is given a charge-sheet and an opportunity to file an explanation; that the enquiry must be conducted according to the principle of natural justice; that all the evidence against the employee who is charge sheeted must be recorded in his presence and he must be given an opportunity to contradict it; that the employee must be given an opportunity to lead his evidence and to submit his final say; and that the enquiry officer must act impartially in imposing the punishment in the charges are proved against the employee.

It is essential that every organisation, whether Government of Semi Government or private, should have a well established reward
and punishment system to ensure that the people are made to work towards the fulfillment of the organizational goals. While the reward system will encourage the employees to work better towards the achievement of organizational goals, punishment system is used to prevent people from working against the organizational goals.

Misconduct, or non-conforming behavior, as it is sometimes called can be tackled in many ways such as counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud etc. the employer is also at liberty to proceed against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However, such proceedings are generally conducted by the state agencies, are time consuming and call for a higher degree of proof. In addition to the above option, the employer also has to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of the displeasure to the severance of the employer-employee relationship i.e. dismissal from service. There was a time when the employer was virtually free to hire and fire his employees. Over a period of time, this common law notion has gone. Today an employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the organisation.
The Disciplinary Proceedings is an important concept in administrative law. In the words of Hegauy, J., 'it is justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical'. Natural justice cannot be fortified or fitted into rigid moulds', said Krishna Iyer, Justice, of the Supreme Court in M/s Krishnadas Tikara Vs. State of Madhya Pradesh (AIR 1977 S.C. 1961).

Natural justice does not supplant any law or rules. It only supplements them. The rules of natural justice cannot be elevated to the position of Fundamental Rights. Their aim is to 'secure justice or to put it negatively to prevent miscarriage of justice'. They require that a judge should be free from bias; that the party is given an opportunity to be heard; that the decision is taken in a befitting manner; and that the party should be informed of the reasons for the decision. The rules can operate only in areas not covered by any law validity made. This is view taken by the Supreme Court in the case of Union of India Vs. J.N. Sinha and Others (AIR 1971 SC 40)²

4.1.3 Hypothesis

In the light of above stated objectives, following hypothesis were set for testing through the study:

1. Improper conduct of Discipline Rules framed or executed it the result of high dis-satisfaction among all categories of employees.

2. Non-involvement of participation of union subordinate has led to the woes of employee because of his illiteracy and not understanding rules of discipline in their proper prospects.

² Swamy News 2002 (Swamy's Hand Book), Twenty-eighth Edition
4.1.4 General & Specific Objectives

Any problem has a solution and solution has got alternatives. So to choose the best and most suitable from the available alternatives is a very crucial and risky job.

It is well-established fact that a well designed and properly conducting Disciplinary Proceedings has most important objectives to attain. The study is undertaken to understand the point of view of employees vis-à-vis employers or management.

(a) Overall evaluation & effectiveness of applicability of principles of natural justice.

(b) Examination of the contributory factors to their relative success or failures in initiating disciplinary proceedings in National Textile Corporation (Mah. North) Ltd. and its unit mills.

(c) To get factual information about the extent of applications of Disciplinary Proceedings in National Textile Corporation (Mah. North) Ltd. and it's unit mills and it's effect on their standing orders.

(d) To examine factors that adversely affecting implementation of Disciplinary Proceedings.

Consequences of the results of the existing rules applicable to all sick textile industries have not so far been dealt with by researchers. Here an attempt is made to throw more light on the subject.
4.2 Collection of Data

4.2.1. Universe & Sample

The following sample methodology was adopted for this study:

i) To achieve the 1st objective of this study informal interview with the top executives of NTC(MN) Ltd., Chief Manager of Personnel Department and Officer connected with the Disciplinary Proceedings was held. The information was collected from the records available.

ii) The 2nd objective was achieved through sampling and schedule methods in which 3 sets of schedule were prepared for executive Officers of Personnel Department.

iii) The 3rd objective was made through designed questionnaire for Trade Union Office bearers.

iv) The 4th objective was made through interview, questions, to the head of the Units of NTC(MN) Ltd., Training Center of NTC and Trade Union representatives and charge sheeted employees.

The technique of using interview as well as questionnaire was a built-in-device by the researcher to check on the accuracy of responses from the responded, covering all the mills under National Textile Corporation (MN) Ltd. including Vidarbha Region. The interview with charge sheeted employees and other concerned officers lasted for more
than 2 hours. The field work lasted for more than 3 months. The total number of persons selected for this study was 27.

The name of mills selected for study, their names and strength of employees is as follows:

<table>
<thead>
<tr>
<th>Name of Mills</th>
<th>Strength of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>India United Mill No.1</td>
<td>700</td>
</tr>
<tr>
<td>India United Mill No.5</td>
<td>600</td>
</tr>
<tr>
<td>Podar Mills</td>
<td>900</td>
</tr>
<tr>
<td>Tata Mill</td>
<td>950</td>
</tr>
<tr>
<td>Savatram Mill, Akola</td>
<td>400</td>
</tr>
<tr>
<td>RBBA Mill, Hinganghat</td>
<td>650</td>
</tr>
</tbody>
</table>

4.2.2 Method of Data Collection

The present study of ‘Disciplinary Proceedings in Textile Industries of National Textile Corporation (MN) Ltd., Subsidiary of National Textile Corporation Ltd., A Govt. of India Undertaking” has been conducted systematically in National Textile Corporation (MN) Ltd. and its unit Mills spread all over Maharashtra. The required data about all the details was collected from office records of mills concerned. In addition, interview with the officers of the mill was also undertaken and various activities undergoing in the mills were also observed. The study is based on secondary & primary data.

For the purpose of collection of preliminary data observation & interview methods were used. The interview of all levels of management to the downward. The interview contained the information relating to rules, opinion regarding principles of applicability of natural justice in
Disciplinary Proceedings. Besides this in the interview schedule different type of question were contained such as open ended questions, close ended questions, benefit tag questions descriptive type questions etc.

The General Manager of the textile mills taken under study, were asked particularly about the applicability of principles of natural justice in disciplinary proceedings and their causes and effectiveness etc. Suggestions were also invited from them to improve if any improvement can be made in the matter. Data, so obtained was properly classified, analyzed and conclusion was drawn which is incorporated in the relevant chapters.

With a view to make an exhaustive study of the Principle of Natural Justice in Disciplinary Proceedings in NTC (MN) Ltd., and in its unit mills, few court cases and cases of employees who are dismissed, have been studied and quoted in the project.

For secondary data collection, books, journals, records, reports, magazines and newspapers were used wherever found necessary.

4.2.3 Statement of Problem

The governmental functions have increased tremendously. The Administrative tribunals and other executive authorities now come to stay and since they are armed with wide discretionary powers, there could be possibilities of abuse of power. The requirement of making a Speaking order will minimize this possibility, as the necessary search for reasons will ensure reasonableness. Reasons are the links between the materials on
which certain conclusions are based and the actual conclusions drawn. They disclose how the mind is applied to the subject matter while arriving at a decision, be it a purely administrative or a quasi-judicial matter. By a recent pronouncement of the Supreme Court in Siemens Engineering Vs. Union of India (AIR 1976 SC 1785), it has been held that the rule requiring reasons to be recorded by quasi-judicial authorities in support of the order passed by them is a basic object of natural justice. This is one of the most valuable safeguards against any arbitrary exercise of power by the authorities.

The rule of natural justice supplements the law and do not supplant it. It, thus, follows that where the express provisions of the law or the rules cover a particulars situation, the applicability of the principles of natural justice to that extent is excluded. For instance, where a statutory rule provides that a disciplinary authority may either himself 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 natural justice that no person shall be judge in own case. But where the rules are silent on a point, the gap can be filled by the rules of natural justice.
4.3. Selection of Samples

Since there are 8 units in National Textile Corporation (MN), spread all over the Maharashtra including Vidarbha Region the researcher have taken 6 mills for study. As this topic and the study is closely related with the management and employees, it was necessary for the researcher to know what actually is happening. What is ideal and what is required to the workers and management as well.

All the employees of mills consist of Permanent/Badli workers, Staff, Supervisory and Managerial cadre who are governed by Conduct & Discipline Rule, 1975 and Bombay Industrial Relations Act, 1946 a universe for the purpose of the present study. The universe consist of 4,000 employees. A sample of approximately 25% (i.e. 400 employees) of the universe is taken. A random sampling method was adopted to select the respondents because it was difficult to interview each of them working in various places in all 8 mills, spread all over Maharashtra including Vidarbha Region. Hence sampling technique was adopted. Present study contemplates to analysed data at two levels (i) at organizational (ii) at individual level.

Table 4.2

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Category</th>
<th>No. of Employees</th>
<th>10% Sampling</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Officers</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>2.</td>
<td>Officers of Personnel Department</td>
<td>24</td>
<td>3</td>
</tr>
<tr>
<td>3.</td>
<td>Trade Union Office Bearers</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>4.</td>
<td>Charge Sheeted Employees</td>
<td>40</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>264</strong></td>
<td><strong>27</strong></td>
</tr>
</tbody>
</table>
4.4 **Preparation of Questionnaire**

4.4.1 **Open ended questions**

These types of questions are specially designed for the management or officer cadres. It is because these questions give enough motivation to the person to whom the question is asked. So, there were lot of open-ended questions particularly designed to know the attitude of the management towards these principles and the applicability of these principles of natural justice.

4.4.2 **Close-ended questions**

Looking into their qualifications, perception power and understanding about the question, the Researcher has preferred to add close-ended questions more. This is a special type of technique because it gives a perfect information and idea about what is going on in the respondent’s mind, what are his views and expectations. Close-ended questions do not allow the respondents to reply diplomatically. It is because the answers to such questions is mostly in Yes or No or High, Moderate or Low alternatives that gives enough accuracy to assess and analyze their approach to the problem under study.

4.4.3 **Scope of the Study**

An attempt is made to assess the applicability of principles of natural justice in disciplinary procedures.

The workers responded to the questions with openness of mind who were dismissed. But when it came to fill up the questionnaire.

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4 BIFR (Broad for Industrial and Financial Reconstruction)
they were a little reluctant, very cautious, guarded and hesitate in sensitive questions. But they were taken in the confidence that this information is completely isolated and were assured that the information provided by them would not be divulged under any circumstances.

4.5 Data Analysis And Interpretation

4.5.1 Library Research

Analysis of Historical Records :

As far as analysis of the Historical Records are concerned, Dr. V. G. Mhetras in his editorial of Misconducts Enquiry & Dismissal said “in modern times if any country desires to be strong and prosperous it must inevitably be genuinely wedded to technology and science. Technology and Science play a decisive role in the economic growth and development of any nation and without economic growth and development no nation can hope to prosper and become strong. For achieving the objective of economic growth and development industrial harmony is of basic importance. It is industrial harmony, which creates a sense of partnership between the employer and employee, and inspires them to act jointly in the pursuit of more and more production to enrich the economic life of the nation

It is well known that the doctrine of social justice is and must be the foundation of industrial harmony. The concept of social justice is
not so much academic as a human. The justice equity and good conscience are the basic components of this concept. In the light of this doctrine of social justice that Industrial Tribunal as well as High Court & Supreme Court have attempt to evolve fair, just and equitable principle governed in the sensitive area of industrial jurisprudence which is the subject matter of present study.

As per Shri Muthuswamy and Brinda on Disciplinary Proceedings for Central Government servants stated that Civil Services constitute the backbone of every administration. On their disciplined functioning depends the efficiency of administration. It is but proper; therefore proper law should govern those who man the civil services. The production conferred under Article 311 is the shield against arbitrary action against them. But the alone may not be comprehensive. Numerous rules and regulations are required for the day-to-day administration. Many of these rules are either obscure or are not brought to light unless as actual problem arises.

4.5.2 Tools And Techniques Used in Analysis Of Collected Data

Qualitative and quantitative datas are compiled with a view to know thorough comprehension of the subject point by point so that a birth view picture can be depicted at a glance. For the purpose of discussion the interview schedule was broadly divided in 4 parts namely viz.

1. Personal information
2. Socio-economic conditions
3. Duty & responsibility attached to job
4. Disciplinary Proceedings

The data so collected is processed, analyzed and summarized chapter wise after due scrutiny wherever necessary. The researcher has done scientific study with a view to ensure that all relevant data is contemplated comprised and analyzed. The processing implies editing, coding, classification and tabulation of collected of data so that they are Amenable to analysis. The term analysis refers to the computation of certain measures along with searching for patterns of relationship that exist among data-groups. Thus in the analysis, relationships or differences supporting or conflicting with original or new is subjected to statistical tests of significance to determine with what validity data can be said to indicate any conclusions. The data analysis involved a number of closely related operations, which are performed with the purpose of summarizing the collected data and organizing these in such a manner that they answer the researcher’s question(s).

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