

**WELCOME.
PRESENTATION ON**

DOMESTIC ENQUIRY-MISCONDUCT
OF EMPLOYEES.

BY

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Article 311 of [Constitution of India](#) deals with **Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**

- 1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be [dismissed](#) or removed by an authority subordinate to that by which he was [appointed](#).

- [(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ***:
- [Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

- Provided further that this clause shall not apply.
- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

- (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

- Generally, opportunity before an employee getting dismissed will be available twice - at the inquiry stage and later at dismissal stage. However, this was changed by way of Constitutional (42nd Amendment Act, 1976 where in, after inquiry, a punishment amongst dismissal, removal or reduction of rank will be given on the basis on evidence obtained during the inquiry.
- 'Dismissal' bars the person from further employment. 'Removal' allows the person to seek further employment.
- Provisions of [Indian Evidence Act, 1872](#), [Code of Civil Procedure, 1908](#) or [Code of Criminal Procedure, 1973](#) do not apply during departmental inquiry
- Compulsory retirement is not punitive action. No protection under this Article will be available in cases of compulsory retirement. Compulsory retirement does not involve any penal consequences and all his past pays will be paid.
- Protection under Article 311(2) is available for both permanent and temporary Government servants.

Relavant Cases :

- State of UP v A N Singh, AIR 1965 SC 360
 - For an employee to be a civil servant, there should be a master-slave relationship between the State and the employee
 - Employees of Statutory Corporations registered under [Companies Act, 1956](#) are not civil servants
- Mahesh v State of UP, AIR 1955 SC 70: Dismissal by an officer of the same rank is valid
- Shyam Lal v State of UP, AIR 1954 SC 369
- D Ramaswami v State of Tamil Nadu, AIR 1982 SC 793: Compulsory retirement ordered shortly after a promotion is invalid and unsustainable.
- Purushottam Lal Dhinra v Union of India, AIR 1958 SC 36
- [Pradip Kumar Vs Union of India and Others](#), Civil Appellate Jurisdiction, Civil Appeal No. 9082 OF 2012, Supreme Court of India judgement dated December 14, 2012

Related Articles

- [Article 309](#): Recruitment and conditions of service of persons serving the Union or a State
- [Article 310](#): Tenure of office of persons serving the Union or a State
- [Article 312](#): All-India services
- [Article 312A](#): Power of Parliament to vary or revoke conditions of service of officers of certain services
- [Article 313](#): Transitional provisions
- [Article 14](#): Right to Equality

- **Related Acts/ Law :**
- [Industrial Disputes Act, 1947](#)
- [Principles of Natural Justice](#)
- [Doctrine of Pleasure](#)
- AndhraPradesh Civil Services (Classification, Control and Appeal) Rules,1991

Doctrine of Pleasure As Under The Indian Constitution :

The doctrine of Pleasure is a common law rule. This doctrine has its origin in England. The Doctrine of Pleasure is a special prerogative of the British Crown.

[1] In England, a servant of the Crown holds office during the pleasure of the Crown and he can be dismissed from the service of Crown at pleasure. The tenure of office of a civil servant can be terminated at any time without assigning any cause. Even if there exists any special contract between the Crown and the civil servant concerned, the Crown is not bound by it. The civil servant is liable to be dismissed without notice and they cannot claim damages for wrongful dismissal or immature termination of service.

- .[2]The Crown is not bound by the any special contract between it and a civil servant, for theory is that the Crown could not fetter its future executive action by entering into a contract in matters concerning the welfare of the country. The justification for the rule is that the crown should not be bound to continue in public service any person whose conduct is not satisfactory.
- [3]This common law Doctrine hence in England is based on Public Policy. The public policy is that a public servant whose continuance in office is not or is against the public interest must be relieved of it.

- [4] Doctrine of Pleasure under the Indian [Constitution](#) is also based on the same policy considerations as it existed under the common law in England. Though doctrine of pleasure is accepted in India as it has developed in England, it has not been completely accepted in India. This Doctrine of Pleasure is embodied in India in [Article](#) 310(1).It reads as follows:

Tenure of office of persons serving the Union or a State .

- 1) Except as expressly provided by this [Constitution](#), every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State

- This is the general rule which operates “except as expressly provided by the [Constitution](#).” This means that the Doctrine is subject to constitutional limitations. Therefore, when there is a specific provision in the [Constitution](#) giving to servant tenure different from that provided in [Article](#) 310, then that servant would be excluded from the operation of the pleasure doctrine.

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The following are expressly excluded by the [Constitution](#) from the rule of Pleasure.

They are:

1. Supreme Court Judges [Article](#) 124,
2. Auditor General ([Article](#) 148)
3. [High Court](#) Judges ([Article](#) 217, 218)
4. A member of Public Service Commission ([Article](#) 317)
5. The Chief Election Commissioner.

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DOMESTIC ENQUIRY :CONCEPTUAL ANALYSIS

"Domestic" (from the latin word 'domus' - means 'house') has an adjective meaning, 'belonging to the house' or 'remaining much at house' or 'relating to internal affairs' or 'private' (as opposed to public) and

enquiry (inquiry) means 'making investigation/ examination of facts / principles' or 'searching / seeking information by asking questions' or 'asking what, whether, how, why etc. It also means 'search for truth'.

Thus, 'domestic enquiry', in the context of Industrial management as opposed to Governmental management of legal functions- means management's search for truth or otherwise of facts/ circumstances / allegations / charges alleged by it against its employees

This institutions is an off shoot of the philosophy of social Justice, sanctified by statutes, Judicial Pronouncements and rules made under them and fortified by the fundamental rules of Natural Justice.

"Domestic Enquiry" was of no import or relevance to the law of master and servant, in the context of philosophy of laissez faire, which one held the field every where prior to Industrial Revolution. Then 'contract' rather than 'status' was the basis of relationship of master and servant. Master then had absolute uncontrolled and unregulated powers of 'hire and fire' and the parties, besides their implied obligations and rights could provide for any express terms, provided the same is done by free consent and is for lawful consideration and for a lawful object and is not expressly declared to be void under any law (implied obligations of servant were faithfulness, competence, satisfaction to the master, obedience and dutifulness, diligence). The master was absolute Judge in these matters and he was only answerable to the Courts under common law, if any when any action for damages was brought against him by the employee and that too under law of contract only.

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

CONCEPT OF MISCONDUCT

An organization is a living social organization wherein employers and employees work to satisfy their economic as well as sociological and Psychological needs.

This essentially calls for balancing of objectives. No organization can properly function unless limits are set to individual behavior which may jeopardize the interests of the organized establishment. This function is generally described as maintenance of discipline. Discipline, indeed is the very basis of a well organized and established enterprise. It forms the backbone of the industrial management. With the establishment of relationship of employer and employees, certain Code of Conduct for mutual relationship develops.

Discipline connotes observance of the prescribed rules of conduct or mode of life. It implies willingness to work and conforming to the established rules. Obedience to lawful orders is contemplated under the contract of service.

Discipline is a behavioral question concerning human resources. Disciplinary action is one of the major causes of industrial dispute. Every employee has strong security needs as well as a need to identify with a group of like minded people. A normal employee likes to work to wow and to get recognized.

The employers have always regarded the right of disciplinary action as concomitant to the efficient attainment of the objectives of industrial activity. On the other hand, the workers and their unions regard protection from non-arbitrary or unjustified disciplinary action as one of the most important functions of trade union activity. The root cause of disciplinary action is a misconduct. Hence, it is important to understand what precisely amounts to misconduct.

'Misconduct' has not been defined either in the Industrial Disputes Act, 1947 or in Industrial Employment (Standing Orders) Act, 1946 under which most of the standing orders governing conditions of service are framed.

Though, it is very difficult proposition to give any exhaustive definition of Misconduct, we can broadly group the misconduct in three categories :-

Misconduct relating to work i.e. non-performance or negligence of duty; absence without leave or overstaying sanctioned leave without permission, absence from the place of work unauthorized, disregard of safety equipment and procedure, guidelines.

Misconduct relating to discipline i.e. in sub-ordination or disobedience whether alone or in combination with others; disobedience of the lawful orders of the superior, striking work or inciting others to strike work; go slow, gherao, etc.

Misconduct relating to integrity i.e. theft, fraud or dishonesty, giving false information misappropriation of employers money, etc.

Under clause 4(3) of the Industrial Employment (Standing orders) Central Rules, 1946, the following acts and omissions shall be treated as misconduct.

- (a) Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- (b) Theft, fraud or dishonesty in connection with the employers business or property
- (c) Willful damage to or loss of employer's goods or property.

(d) Taking or giving bribes or any illegal gratification.

(e) Habitual absence without leave or absence without leave for more than 10 days.

(f) Habitual late attendance.

(g) Habitual breach of any law applicable to the establishment

(h) Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline.

(i) Habitual negligence or neglect of work.

G) Frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month.

(k) Striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law.

Clause 17 Schedule 1A of the Industrial Employment (S.O.) Rules 1946 prescribes what constitutes misconduct in Coal Mines. It includes (1) any breach of the Mines Act, 1952 or any other Act or any rules, regulations or bye-laws there under or of any standing order; (2) failure or refusal to wear or use any protective equipment given by the employer.

The Supreme Court has very rightfully observed :

"The word 'Misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude. It must be improper or wrong behavior, unlawful behavior or transgression of definite rule of action or code of conduct, established and but not mere error of judgments, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality of character".

(State of Punjab V. Ram Singh, ex- constable, 1992, AIR 2595
Firestone Tyre & Rubber Co. v. workman, 1967, II, LLJ 715 SC)

A domestic enquiry is a quasi-judicial proceeding and as such one of its essential requirement is that the rules of natural justice have to be observed in holding it. The Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 lay down several rules of Natural Justice. But these two Acts are not strictly applicable to Domestic Enquiry.

Rules of Natural Justice is meant those basic Principles of Justice which are founded on Equity and reason and without which no Justice can be done.

It is not possible to make a complete list exhausting all the rules of Natural Justice in brief It can be said that the Rules of Natural Justice are those rules which it is absolutely essential to Natural Justice?

Rules of Natural Justice is a matter of substance, not of form. It includes two basic principles of Equity.

1. No one shall be a judge in his own cause (*nemo iudex in propria causa sua*) I.e. he must not have anything like personal interest in the case,
2. No decision shall be given against a party without affording it a reasonable hearing (*audi-alterem partem*).

PRELIMINARY ENQUIRY-

It is customary and in complicated case, it is desirable to have a Preliminary Enquiry/Investigation into the allegations/accusations against a workman, for finding out whether there is any prima facie case justifying initiation of formal proceedings.

Preliminary enquiry is made solely with a view to decide whether there is adequate material for initiating a Domestic Enquiry against a workman. In other words, the preliminary enquiry is merely for the purpose of framing a charge and for determining

whether a prima facie case for a formal enquiry is made out or not and results can not be deemed to be conclusive. It is conducted merely for the satisfaction of the employer and it is only when the employer decides to held a regular Domestic Enquiry for the purpose of inflicting punishment that the employee gets an opportunity of being heard and defends himself.

It is not necessary that the workman should be present while the preliminary enquiry is being conducted. It may start on the complaint being lodged by one workman against another workman or on a complaint by the supervision under whom the workman is working. The necessity to conduct a preliminary enquiry depends on the nature of the offence and it is not necessary in all cases where misconduct is alleged. The Statements recorded during the elementary enquiry make nothing to do with the regular enquiry unless they are produced by the Management in the course of the enquiry proceedings

After this is done, if the statement given by any witnesses during the preliminary enquiry differs from that of the final enquiry, the enquiry officer may draw the attention of the witness to the same and seek clarification on those points

ESSENTIALS OF A FAIR ENQUIRY :

The procedure of the domestic enquiry which is generally accepted has been evolved and governed by three factual viz. the service rules/slanding orders, the method followed by courts of law and the principles of natural justice.

An enquiry cannot be said to have been properly held unless

- (i) the employee proceeded against has been informed clearly of the charges leveled against him
- (ii) (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges
- (iii) (iii) the employee is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and
- (iv) (iv) the enquiry officer records his findings with reason for the same in his report.

CHARGE AND CHARGE SHEET :

The Domestic enquiry starts the moment the charge sheet is issued to the workman.

Charge sheet or show cause notice is meant to appraise the concerned employer with the details of the misconduct alleged against him.

The charge sheet should mention the misconduct committed, the date and time of its commission and relevant section of the standing orders under which the misconduct falls.

Charge sheet is issued calling upon the delinquent employee to submit his written explanation within a specified period of time

SERVICE OF THE CHARGE SHEET :

Generally standing orders provide the manner of serving the charge sheet on the workman concerned and where it is prescribed the procedure should invariably be followed. Generally the charge sheet framed against an employee should be served on him personally, if possibly, and an acknowledgement to that effect should always be obtained from him. In cases where the employee is absent or refuses to accept the charge sheet when presented to him, the same should be sent to his local and permanent address under registered post with acknowledgement due, after getting his refusal attested by two witnesses. In case the charge sheet is returned by the postal authorities, the employer should display the charge sheet on the notice board, if such a provision exists in the service rules. In such case it is necessary to publish it in a local newspaper in the regional language with a wide circulation. It is not enough to display the charge sheet only on the notice board of the company.

SUSPENSION PENDING ENQUIRY : An employer may suspend a workman on finding that misconduct complained against him is of grave and serious nature. The presence of the employee on the workplace, if considered dangerous for the security and maintenance of order and discipline in the establishment or it is greatly apprehended that he may tamper with the evidence, the delinquent employer may be suspended.

The employer may do so as measure of security to the life or property of any person or of the management, or to avoid the possibility of the employee using his influence, in winning over the witnesses threatening or intimidating them or in tampering with the evidence and official records. Suspension means that the contractual relationship between the employer and the employee remain in abeyance for the period of suspension.

Suspension can be ordered either before the issue of charge sheet or after the receipt of reply of the employee or at any time during the pendency of the enquiry proceedings or after the findings of the enquiry varying according to the circumstances. Discipline and Appeal Rules, Standing orders provide for the payment of subsistence allowance by the employer during the period of suspension pending departmental enquiry or criminal proceedings.

In the departmental enquiry the subsistence allowance for the first 90 days is one half of the emoluments and shall be three fourth if exceeds the above period. But if the enquiry is prolonged beyond 90 days for reasons attributable to workman, the subsistence allowance shall be reduced to one fourth of the emoluments.

Rule 14 of Industrial Employment (Standing orders) Central Rules, 1946 provides :

Disciplinary action for misconduct :

4(a) where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceeding against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.

4(b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of Section 1 OA of the Act.

(ba) In the enquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.

(bb) The proceedings of the inquiry shall be recorded in Hindi or in English or in the language of the state where the industrial establishment is located, whichever is preferred by the workman.

(be) The proceedings of the inquiry shall be completed within a period of three months provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer

CONSIDERATION OF EXPLANATION BY EMPLOYER:

After a charge sheet has been served on the accused workman, he may send his explanation in either of the following ways :

- (i) admitting the charges and pleading for mercy.
- (ii) denying the charges in totality .
- (iii) requesting for more time to submit the explanation after inspection of certain documents which is in possession of the management.
- (iv) the employee may not submit the explanation at all.

The above four positions sought for the following actions :

- (i) Where the employee admits the charges which are of minor nature and begs for mercy, a detailed enquiry need not be held and a decision may be taken accordingly on the charge sheet. Care is taken that the admission of guilt must be recorded in writing and signed by two witnesses including the delinquent Employee. If, however, the misconduct is of a serious nature warranting discharge or dismissal enquiry should be held, notwithstanding the admission of charges.
- (ii) In case where the workman submits an explanation mentioning that the charges levelled against him are baseless, false, motivated, a proper enquiry should be held before awarding any punishment
- (iii) When the workman concerned makes a bona fide request on reasonable grounds for extension of time to submit explanation, the same is generally granted to avoid any further complications.
- (iv) In the circumstances where the delinquent employee fails to submit any explanation within the specified time limit, the management should take steps to hold a proper enquiry.

APPOINTMENT OF ENQUIRY OFFICER :

After a careful consideration of explanation of the delinquent employee or when no reply is received within the specified time limit, the management should appoint an enquiry officer to hold an enquiry against the delinquent employee. The enquiry officer may be an official of the company or even an outsider, but the enquiry officer should be an impartial person with an open mind, free from any bias, prejudice and a person of high integrity and moral values. One who will be a witness in the ensuing enquiry or has any personal interest in the case is not eligible to be the enquiry officer.

- *.Notice of Enquiry.
- *The Management Representative.
- *Representation of the Charge Sheeted Employee.
- *Evidence: Rules of Natural Justice.
- *Supply of Relevant materials.
- *Production of witnesses.
- * Examination of witnesses.
- *Enquiry Pending Criminal Proceedings.
- *Adjournment and Ex-Parte Proceedings.
- *Report of Enquiry Officer.
- *Discrepancies or perversity.
- *Action on Enquiry Report.
- *Punishment.
- *Legal Effect of Enquiry Report.
- *Observation.
- *Reference.

Types of Punishment:

Rule 13 of civil Services Rules, 1957 enumerates the following punishments:

1. Withholding of increments or promotion,
2. Recovery from pay of the whole or part of any pecuniary loss caused to the government,
3. Reduction to a lower service, grade or post, or to a lower stage in a time scale,
4. Compulsory retirement,
5. Removal from service which shall not be a disqualification from future Employment,
6. Dismissal from service which shall ordinarily be a disqualification for future employment

THANK YOU

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