

K.P. CHAKRAVARTI *DOMESTIC ENQUIRY & PUNISHMENT* (4TH EDITION, 2010). By Ranadhir Kumar De. Eastern Law House Private Ltd., 54 Ganesh Chander Avenue, Kolkata-700013. Pp. 84 + 671. Price: Rs. 750/-.

THE INDUSTRIAL relations law is incorporated under two central legislations, besides the Trade Unions Act, 1926, *viz.* the Industrial Disputes Act, 1947 (the ID Act) and the Industrial Employment (Standing Orders) Act, 1946 (the IE Act). The ID Act prescribes, *inter alia*, the machinery for mediation, arbitration and adjudication of industrial disputes between the employers and the workmen with a view to prevent and control industrial strife and unrest which disrupt production of goods and supply of services needed by the nation. The purpose of the IE Act is to guide the employers to frame 'standing orders' defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, *etc.* with a view to minimising friction between the employers and the workmen. None of these legislations, however, contains the principles and procedure for holding a domestic enquiry and related matters which is mostly based on case-law, particularly the principles of natural justice and judicial review laid down by the courts, since the statutory law does not cover most of the aspects of this branch of law. Since decisional law suffers from the basic problems of precision, certainty and predictability, the law relating to domestic enquiry is also full of these shortcomings. For almost every case, the legal principles have to be applied by reference to the facts and circumstances of each case. It is, therefore, very difficult to get the entire law on domestic enquiry at one place.

The present fourth edition of the book¹ of K.P. Chakravarti revised by Ranadhir Kumar De is an excellent addition to the subject which fills the vacuum in this branch of law. The book originally written by K.P. Chakravarti in 1983 aimed at providing the wealth of case law for lawyers, trade unions, workmen, industrial adjudicators, *etc.* The journey of the

1. Ranadhir Kumar De, K.P. Chakravarti *Domestic Enquiry & Punishment* (4th ed., 2010). Another excellent book on the subject is Markandey Katju, *Domestic Enquiry* (6th ed., 1999).

book covers almost three decades and the aim set by the author seems to have been well achieved. The book is a comprehensive analysis of cases pertaining to domestic enquiry and punishment. It contains twelve chapters. After general introduction about disciplinary jurisdiction in the industrial management, the book discusses in detail the concept of 'misconduct' which has not been statutorily defined under the IE Act, though the same has been provided in the "Model Standing Orders" appended as clause 14 of schedule I to the Industrial Employment (Standing Orders) Central Rules, 1946 under the title "Disciplinary action for misconduct". The difficulty about this definition is that it is not compulsory for the employers to adopt it *verbatim* but only 'as far as practicable'.² Moreover, the IE Act does not apply to all industrial establishments.³ Unless the term 'misconduct' is clearly defined, disciplinary proceedings may face serious hurdles as would be clear from *A.L. Kalra v. Project and Equipment Corporation of India Ltd.*⁴ In this case, it was alleged that the appellant was guilty of misconduct under rules 4(1)(i) and (iii) and 5 of the Project and Equipment Corporation of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules, 1975 as he, after taking house building advance and also advance for purchase of motor cycle, neither utilised the money for the purpose for which he had taken them nor refunded the amounts with interest within time. After enquiry, the appellant was removed from service on the ground of misconduct. The Supreme Court held the removal to be illegal and invalid, *inter alia*, on the ground that the action of the appellant was not covered within the meaning of 'misconduct' as defined under the 1975 rules.

Chapter 3 of the book deals with charge-sheet which is an essential requirement before starting a domestic enquiry. The purpose of charge-sheet, the essentials of a valid charge-sheet and numerous instances of defects in charge-sheets have elaborately been discussed in this chapter. Chapter 4 is devoted to suspension of an employee. In this chapter, the author also discusses as to when suspension can be treated as punishment as against the general proposition that suspension is not considered to be punishment.

Chapters 5 and 6 dealing with the conduct of domestic enquiry and deficiencies in holding them form major part of the book. These chapters are followed by chapters 7-9 which deal with submission of enquiry

2. See s. 3(2) of IE Act.

3. *Id.*, s. 1(3) and (4).

4. (1984) 3 SCC 316.

report and punishment. In case the enquiry is found to be defective or the punishment is quashed on any ground, the employee may be entitled to reinstatement with full or part back wages or merely award of compensation, depending on the facts and circumstances of each case. Indeed, these chapters are very rich in content and presentation. The author has dealt with major judicial pronouncements concerning the application of the principles of natural justice and the scope of judicial review in service matters. The last chapter of the book contains 'The Epilogue'. In the end, the book contains specimen of 28 suggested draft forms which may be used in domestic enquiries.

In the present edition, Ranadhir Kumar De, claims to bring:⁵

[U]pdated legal notions and modern views on misconduct and penalty as laid down in numerous reported decisions of the Courts down to 2009. The instant edition keeps the fervour of the original edition but omits which is beside the scope of domestic enquiry. To be specific, this edition deals exclusively with the subject of gross indiscipline and the methods and principles recognized by the Apex Court in controlling it and deliberately limits commentaries on the creation of machinery for conciliatory process or the method of referring industrial disputes to authorities created by the Act. This new edition notices that earlier indulgent view to labour by Writ Courts is on the wane and it is being replaced by radical changes in the approach to the labour delinquency....

It is difficult for the present reviewer to fully agree with the above claim/view made by De. *First*, not a single case reported in 2009 was found anywhere in the book as claimed though many of them relating to the subject were reported in various law reports.⁶ *Second*, it is difficult to agree that the method of referring the industrial disputes to various

5. *Supra* note 1 at 7.

6. For some illustrative cases, see *Biecco Lawrie Ltd. v. State of West Bengal* (2009) 10 SCC 32; *Regional Manager, Bank of Baroda v. Anita Nandrajog* (2009) 9 SCC 462; *Subhash v. Divisional Controller, Maharashtra SRTC* (2009) 9 SCC 344; *Divisional Manager, Rajasthan SRTC v. Kamaruddin* (2009) 7 SCC 552; *U.P. SRTC v. Nanbe Lal Kushwaha* (2009) 8 SCC 772; *P.V.K. Distillery Ltd. v. Mahendra Ram* (2009) 5 SCC 705; *Jagbir Singh v. Haryana State Agriculture Mktg. Board* (2009) 15 SCC 327; *Metropolitan Transport Corpn. v. V. Venkatesan* (2009) 9 SCC 601; *M.P. State Electricity Board v. S.K. Yadav* (2009) 2 SCC 50; *Tirupati Jute Industries Ltd. v. State W.B.* (2009) 14 SCC 406; *Novartis India Ltd. v. State of W.B.* (2009) 3 SCC 124.

authorities created under the ID Act was “beside the scope of domestic enquiry”. The industrial tribunals and labour courts have vast powers under section 11-A of the ID Act. It is very important to notice as to how these adjudicatory forums have given their awards in cases referred to them and for that purpose, a discussion on the procedure for making reference and adjudication would have been quite useful. *Third*, the recent judicial trend in industrial adjudications resulting from liberalisation of the Indian economy in 1991 and under the impact of globalisation, a shift from pro-labour to pro-management or purely literal interpretation of the labour welfare legislations is noticeable but the same does not seem to have come up clearly in the book. *Finally*, during 2009-10, the Supreme Court in some of the cases⁷ unequivocally deprecated the court’s shifting approach to the interpretation of labour legislations on the ground of globalisation and liberalisation of the economy. The court emphasised the need to interpret laws in conformity with the fundamental rights and the directive principles of state policy. The author has not indicated as to whether he agrees or does not agree with the shift in the court’s attitude either way.

The book under review, despite the above observations, is a welcome addition to the law on domestic enquiry which would be very useful to all those dealing this subject as professionals and also for researchers and students interested in the detailed study of this branch of law.

S.N. Singh*

7. *Harjinder Singh v. Punjab State Warehousing Corporation*, AIR 2010 SC 1116; see also *Maharashtra SRTC v. Casteribe Rajya Paivahan Karmachari Sanghatana* (2009) 8 SCC 556.

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