

DOMESTIC ENQUIRY. (4th Ed., 1990). By Markanday Katju. N.M. Tripathi Private Limited, Bombay. Pp xxi+200. Price Rs. 100.00.

THE BOOK under review is the fourth edition of the work. The first edition was published in the year 1975. The preface of the present edition is dated June 1990. During the span of these 15 years, the law relating to domestic enquiry has considerably evolved since it is mainly judge made law. The work is a commendable attempt by the author to imbibe in a handy book, the elements of that branch of industrial law which relates to the requirement and procedure in respect of disciplinary action against an errant workman. The book also gives reference to important decisions till about the first half of the year, 1990. The author has candidly pointed out that the law relating to domestic enquiry is progressing so fast that sometimes even while the process of publishing is going on, new case law comes into existence.

It is gratifying to note that for a beginner in the field of labour law, particularly in the branch relating to domestic enquiry, the book admirably serves the purpose of giving an insight on almost all the important topics relating to domestic enquiry such as procedure of conducting a domestic enquiry, rules of natural justice, misconduct and consequential punishments. It also deals with the jurisdiction of tribunals and the procedure before the tribunals. The author has also given models of charges and enquiry report etc. The Industrial Disputes Act 1947 forms part of the book as an appendix.

In the chapter on preliminary enquiry, the author has expressed the view:

After the preliminary enquiry has been held the employer may decide to hold a regular domestic enquiry. It must, however, be noted that even if no prima facie case has been made out against the accused workman in the preliminary enquiry, the employer may yet hold a regular enquiry. This is because a preliminary enquiry is only for the subjective satisfaction of the employer and the court cannot go into the question whether a prima facie case has been made out or not.<sup>1</sup>

The author has not cited any case law in support of this view. The view, however, is not such as might be accepted unhesitatingly. Principles of natural justice play the decisive role in an industrial dispute or a dispute attracting labour law. It is another matter that the employer has without any preliminary enquiry, decided to hold a regular domestic enquiry. Where, however, a preliminary enquiry has been held and no prima facie case has been found against the accused workman, will the holding of a domestic enquiry be in conformity with the principles of natural justice? And why cannot the court look into the question that no prima facie case had been found against the workman at the stage of preliminary enquiry? After all an industrial dispute is less serious than a criminal case.

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1. See Markandey Katju, *Domestic Enquiry* ch. II at 11, synopsis point no. 2 of part II.

If there is no prima facie case against the accused of a criminal case, he has the right to be discharged and cannot be chargesheeted. It will be travesty of justice to charge an accused with an offence and proceed with the trial in the wake of the charge, even when there was no prima facie material against the accused. It is hoped that the author may in his next edition of the book examine the matter in the light of what has been submitted above.

Likewise, the author has relied on a case law of the Kerala High Court<sup>2</sup> in making the following observation while dealing with the procedure in a domestic enquiry<sup>3</sup> and also while dealing with the subject of rule against bias.<sup>4</sup> The author has observed : "Where the Enquiry Officer cross-examines the employee himself it is evidence of bias".

The view needs reconsideration. The basic minimum cross examination which the enquiry officer must do to satisfy himself on a particular point disturbing the conscience of the enquiry officer, is an aspect which is fundamentally different from a case where the enquiry officer cross examines in the spirit of a prosecutor. A generalised statement of the nature quoted above may not be in consonance with the principles of natural justice. The Kerala High Court apparently had in view a case where the enquiry officer had acted in the spirit of a prosecutor. Generally at the stage of domestic enquiry there is no representative of the management present to cross examine the workman and if there is total prohibition on the enquiry officer to put any question whatsoever to the workman – even though he is not acting in the spirit of a prosecutor; the ban itself will hit the principles of natural justice.

One more point which may need reconsideration by the author may be noted. The author has prepared a model enquiry officer's report which figures as model no. 5 in the chapter (part viii) relating to models of documents and forms. The concluding paragraph runs as follows : "I hold Shri A.B. clearly guilty of insubordination and assaulting his superior officer. His past records show that he has been guilty of insubordination on previous occasions too and therefore there are no extenuating circumstances in the case. I therefore recommend that he may be dismissed from service."

Is the enquiry officer justified in keeping in view the past record of insubordination which did not form part of the charge sheet and the domestic enquiry had proceeded on a particular misconduct? Secondly, how far is it permissible to the enquiry officer to recommend to the management the punishment which should be awarded to the workman? It is hoped that in the next revised edition the model may be suitably modified in the light of observations made above.

On the whole, the book is a commendable piece of work manifesting learning, skill and industry of the author.

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2. *C. Nagraj Bhat v. Canara Bank*, 1988(57) F.L.R. 722 Ker.

3. See *supra* note 1, ch. IV at 21, synopsis point no. 8 of part II.

4. *Id.*, ch. II, at 43, synopsis point no. 3 of part III.

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## BOOKS RECEIVED FOR REVIEW

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