

DOMESTIC ENQUIRY AND PUNISHMENT (5th Edition 2025). AK Srivastava published by Eastern Law House Publication. Pp 225, Price 2450. ISBN-10: 8197258333

LABOR JURISPRUDENCE in India, particularly in the context of disciplinary proceedings, is a complex interplay between statutory mandates and evolving judicial Interpretation. Industrial workers are governed by the Industrial Disputes Act 1947, Industrial Employment (Standing Orders) Act 1946 and rules made thereunder. Therefore, any disciplinary action against any workman must be taken within the four corners of these laws and rules. Even resorting to any rules framed under proviso of Article 309 of the Constitution of India will be illegal and *Non-Est* in the eyes of law.¹

The book is an outstanding work pertaining to labor jurisprudence. In its Fifth edition it covers all the aspects of the subject, like misconduct in employment, chargesheet for misconduct, suspension, principle and procedure of domestic enquiry, principles of natural justice, punishment for misconduct, protection from punishment, dismissal without holding domestic enquiry, reinstatement, back wages, compensation, retrenchment, unauthorized absence and so on. All most all-important verdicts down to the latest such decisions of the Supreme Court and the high courts have found place. Book consists of 11 chapters associated with 11 different sub-themes *vis-à-vis* facets of the employer-employee relationship under the Labour jurisprudence.

In the opening chapter, the author offers an incisive analysis of the disciplinary jurisdiction within the framework of labour jurisprudence. The chapter begins by unpacking the legal concept of an industrial dispute, emphasizing its evolving nature in the context of changing labour-management dynamics. A significant portion is devoted to the role of discipline and decorum in maintaining industrial harmony, highlighting how these elements are not solely in the interest of management but are equally crucial for the overall welfare of the workforce. The author presents a balanced view, rationalizing the necessity of disciplinary mechanisms while advocating for employee dignity and welfare. The legal essentials of labour disputes are meticulously discussed, with references to statutory provisions and judicial interpretations that have shaped labour jurisprudence in India. Further, the chapter delves into the master-servant relationship, exploring its legal, ethical, and socio-economic dimensions. The causes of friction between employers and employees are also examined, with the author arguing that industrial unrest often stems from the absence of emotional and psychological support. The critique underscores how coercive disciplinary practices, devoid of empathy and motivation, often exacerbate workplace tensions, thereby undermining industrial peace and productivity. Overall, the chapter sets a thoughtful tone for the book's broader inquiry into labour law. The title of the first chapter did

1 *Raghubir Singh v. Haryana Roadways* (2014) 10 SCC 301; (2015) 1 SCC (L and SO 23.

not justify the contents properly. This chapter also gives an overview of industrial disputes and the existing legal framework available at disposal for both industrial management and workmen.

Chapter 2 deals with aspects and facets of Misconduct in Employment. The word “misconduct” cannot capable to be defined, but judicial pronouncements over time have drawn contours of scope and ambit of the word misconduct by stressing upon facets, acts and instances which may amount to misconduct. Citing numerous judgements, it established that misconduct varies on case-to-case basis. Broadly speaking, discipline and decorum in an Industry are vital for the smooth functioning of the establishment and any act which hampers the functioning of the establishment must be referred as misconduct and must be dealt with accordingly. The service condition and disciplinary procedure, including misconduct and punishment, therefore, in any industry must follow Industrial Employment (Standing Orders) Act and Rules 1946. However, there may be an industry which may be regarded as an Industry but is not bound by these standing orders, for instances Banks.² The author stressed upon the construction of misconduct in light of modern changing social values. With the change in attitude, the concept of conduct and discipline eventually changes. Now, the trivial lapses by employees are ignored unless such lapses lead to serious consequences. With the growing unionism and with the development of industrial jurisprudence and of social justice, it has been obligatory on the part of the industrial employer to lay down the service conditions specifying therein the misconduct so that any worker committing any such misconduct can be punished on proof of his guilt. The Supreme Court, in *inter alia Mulchandani Electrical and Radio Industries Ltd v. Workmen*,³ it held that the view that an act, wherever committed, if it has the effect of subverting discipline or good behavior within the premises or precincts of the establishment will amount to misconduct.

Chapter III deals with the chargesheet for misconduct. In domestic enquiry the term chargesheet means a written communication in the form of a memorandum indicating the desire of the employer to investigate into the misconduct of a workman as has come to the employer’s notice which, if proved he may be appropriately punished under the certified standing order.

Chapter IV deals with exercise and power of suspension when disciplinary proceeding is contemplated, or a domestic enquiry is pending. Chapter IV presents a comprehensive exposition on the concept of suspension within industrial jurisprudence. The author

2 Banks are not bound by the Act or the Rules, 1946. In these matters the Banks are governed by the Sastry Award 1952 adopted by the Desai Award 1962 and subsequent settlement between the workers/Trade Union and the Management within the framework of the Sastry and Desai Awards.

3 AIR 1975 SC 2125.

systematically explores the meaning, scope, and legal application of suspension in the context of labour law. Suspension is a temporary cessation of the right to work. During this period, the Industrial Revolution is not severed, but it is put in abeyance.⁴ Various forms of suspension, whether as a disciplinary measure, a precautionary step, or a consequence of pending permission under Section 33 of the Industrial Disputes Act, are examined in depth. Power to suspend is not an implied term in a contract between the master and servant, except for power under section 33 ID Act and such a power can only be created either by the statute governing the contract or by an express term of the contract.⁵ The discussion extends to suspension under certified standing orders, highlighting that the employer is not obligated to disclose the reasons for suspension in all circumstances. The procedural aspects, such as the service of suspension orders and cases of deemed suspension arising from arrest or detention, are also analysed. A nuanced treatment is given to indefinite suspension, particularly when it begins to take the form of punitive action. The author further explores the legal permissibility of challenging suspension orders on grounds of *mala fides* or procedural irregularity. Suspension order should be passed only where there is a strong prima facie case against the delinquent and if charges are proved, would ordinarily warrant imposition of major punishment. The fact of each case has to be taken into consideration distinctly as no formula of universal application can be laid down in this regard. Importantly, the chapter also delves into the jurisprudential and human impact of suspension, noting its potentially damaging effects on an employee's career, reputation, and mental well-being. The Judiciary has established that even during suspension pending enquiry, denial of subsistence allowance would amount to a violation of principles of natural justice.⁶ Finally, it touches upon the legal implications of revoking a suspension following acquittal in criminal proceedings or a finding of "not guilty" in domestic enquiries, thereby offering a holistic view of the subject.

Chapter V forms the core of the book, focusing extensively on the concept and conduct of domestic enquiries in industrial jurisprudence. It opens with a detailed account of the role and authority of the disciplinary authority and then defines the purpose and scope of a domestic enquiry as a quasi-judicial mechanism aimed at ensuring procedural fairness before punitive action is taken against a workman. The distinction between a preliminary enquiry and a formal domestic enquiry is clarified, with the latter being held to a stricter standard of natural justice. The author carefully dissects the legal consequences of omitting an enquiry altogether or conducting one in a defective manner, emphasizing the need for a fair opportunity to the delinquent employee as a foundational principle under industrial law. The procedural steps following the issuance of a chargesheet, such as the appointment of an unbiased enquiry officer,

4 *BB and C.I. Railway v. Patel* (1951) 2 LLJ 584 (Bom).

5 *T Cajee v. Jormanic Siem*, AIR 1961 1 LLJ 652.

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service of notice, and representation rights of the worker, is methodically addressed. The book provides guidance on handling *ex parte* proceedings, examination of witnesses, cross-examination, and the presentation of the company's case. Notably, it emphasizes the importance of allowing the delinquent employee adequate opportunity to adduce evidence in defence. The enquiry officer's duties, including objective appreciation of evidence, observance of general evidentiary principles, and adherence to guidelines, are discussed at length. The admissibility of hearsay evidence, application of the Evidence Act's general principles, and the permissible scope of considering a worker's past record are all explored with analytical precision. The author also covers complex issues such as the use of circumstantial evidence, the evidentiary value of conviction and its reversal, and how enquiries should be handled when the employee is in police custody. Through this discussion, the chapter reinforces the centrality of natural justice and fair procedure in domestic enquiries, making it a vital component of the book's contribution to labour jurisprudence. Principles of natural justice are not embodied explicitly in any statute but are impliedly applied in general practice in such enquiries and hold great significance.

Chapter VI delves into the critical factors that can vitiate a domestic enquiry, underscoring the heightened importance of procedural fairness in the absence of codified statutory rules. The book has emphasized the significance of principles of natural justice in such domestic enquiries. The author meticulously identifies various grounds associated with principles of natural justice on which a domestic enquiry may be rendered legally unsustainable, such as colourable exercise of power, perverse findings, or the failure to record essential findings. A detailed discussion is presented on how these lapses, individually or cumulatively, compromise the integrity of the enquiry process. The chapter further explores complex scenarios, such as the retirement of an employee pending enquiry, and whether such events extinguish the proceedings or affect their validity. Drawing from key judicial pronouncements, including the landmark cases *inter alia* *S.L. Kapoor v. Jagmohan*⁷, the author highlights the settled principle that violation of natural justice, particularly the denial of the right to be heard, is *per se* illegal and enough to invalidate the enquiry. Concepts such as the Wednesbury unreasonableness, *bias*, and other general principles of administrative law are contextualized within the domain of employment law. Additionally, the chapter is supported by a range of illustrative case laws that offer clarity on what constitutes a defective enquiry. Overall, this chapter reinforces the idea that procedural lapses in domestic enquiries can lead to grave miscarriages of justice, making fairness a non-negotiable element.

Chapter VII focuses on the final phase of a domestic enquiry, with particular emphasis on the enquiry report, its nature, scope, and legal significance. The author outlines the key stages of enquiry leading up to the report and stresses its role as a quasi-

7 AIR 1981 136.

judicial document requiring objectivity and reasoned conclusions. Essential features such as clarity, consistency with evidence, and the necessity to avoid perverse findings are discussed. The importance of the enquiry officer providing reasons for each conclusion is highlighted as a safeguard against arbitrariness. It is connoted with the natural justice right to have a reasoned enquiry report. The chapter also examines the procedural steps an employer must follow after receiving the report, including the limits of disciplinary action based on its findings. Overall, the chapter reinforces the centrality of fairness and transparency in concluding disciplinary proceedings. The chapter also discusses the legal attributes and challenges of an enquiry report.

Chapters VIII and IX offer a critical engagement with the law and principles governing the imposition of punishment in industrial relations. Though punishment is one of the prime methods to enforce discipline, it is however, not. A weapon to terrorise the workers and coerce them into slavery. The author begins by explaining the rationale behind punitive action, grounding it in the need to maintain discipline, deter misconduct, and preserve workplace harmony. A substantial part of the chapter is dedicated to the doctrine of proportionality, emphasizing that the punishment must correspond to the gravity of the misconduct. The author categorizes various types of punishments ranging from warning and suspension to dismissal and explores the legal permissibility of imposing dismissal from the date of suspension. The distinction between termination, removal, and dismissal is explained with clarity, highlighting the differing legal implications of each. The chapter also delves into the factors influencing the quantum of punishment, such as mitigating or aggravating circumstances, the worker's past record, and the nature of the misconduct. Particularly noteworthy is the analysis of punishment in the context of strikes, where the author outlines when dismissal may be justified, especially in cases of illegal strikes or those affecting essential services. The discussion is bolstered by references to relevant statutory provisions, including the Essential Services Maintenance Act, thereby offering a well-rounded understanding of disciplinary penalties within the legal and industrial framework. Punishment cannot be dispensed with in cases where the offence is grave and the gravamen of the charge is beyond the scope of counselling. Preventive punishment like removal or dismissal from services aims to prevent a repetition of the offence by rendering the offender incapable of its further commission. The protection of the business requires that a person who has committed a grave misconduct must be restrained from committing further depredations. Correctional measures cannot be effectively applied in cases which require drastic action. Judiciary, in stern words, has observed that if a strike is illegal, the question of its justifiability cannot arise because illegality and justifiability are contradictions in terms.⁸ However, a penalty not provided in standing orders or rules cannot be imposed. The right to initiate an enquiry and impose punishment is a prerogative of employer only. It is not enough to see whether the final order is made by the appropriate authority, it is also important to see who made

8 *Indian General Navigation and Railway Company v. Their Workmen*, AIR 1960 SC 219.

the order to initiate the proceedings.⁹ Punishment must be determined and imposed by a person who is in charge of the entire matter independently free from any interference, and it is he judges that matters. No other authority has any role to play and their interference is not looked kindly upon by the courts.¹⁰ Until 1965, an employee had an unfettered power to deal with an individual workman and the Industrial Dispute Act, 1947 was not much of help. Besides, following the recommendations of the National Labour Commission, a new chapter containing section 25T and section 25U was added to the Act in 1982, forbidding unfair labour practice, a list of which is given in the 5th Schedule of the Act. By virtue, the schedule enumerates a host of actions as “unfair labour practice” by the employer that include discharge or dismissal on account of natural justice, imposition of disproportionate penalty, *etc.*

Chapter X deals with remedies against Punishment. General there is an appeal provision available in the Standing order,. A person aggrieved by such an order may file an appeal before labour court/industrial tribunal/civil court and thereafter under article 226 and 136, seek judicial review of the decision of the tribunal before the high court or Supreme Court.

The requirement of domestic enquiry, defect in enquiry, *etc.*, has been discussed elaborately in the light of the case laws. The law of punishment in industry and the award of punishment have also been dealt with in great depth and detail.

While the book is undoubtedly rich in content and jurisprudential insight, one notable shortcoming lies in its tendency to include material that appears tangential to the core theme suggested by the title. It also suffers from a lack of thematic restraint and academic refinement. With each successive edition, it seems the author has opted to expand the scope by layering additional content without adequately revisiting or refining the earlier material. This cumulative approach has led to certain redundancies and sections that feel disconnected from the central focus on domestic enquiry and punishment. In some chapters, the inclusion of loosely related topics gives the impression of thematic drift, leaving the reader with a sense of engaging with content that lacks clear relevance or necessity. A more rigorous editorial pruning and structural coherence could have enhanced the book’s analytical sharpness and reader engagement. Nonetheless, the comprehensive nature of the text remains a valuable reference point, *albeit* one that would benefit from tighter alignment with its stated subject matter.

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9 *GN Nanjudiah v. IG of Police*, AIR 1967 Mys 179; (1966) 2 Mys LJ 682.

10 *Mansbhukhlal Vithaldas Chauhan v. State of Gujarat* (1997) 7 SCC 622.

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