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# Domestic Enquiry and Principles of Natural Justice in Indian Railways

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## ABSTRACT

*Indian railway one of the largest employment generator in the world, provides employment to over 12million workers. The railway employees perform their duties round the clock over diversified geographical regions. The hardship in performance, sometime the emotion and specific psychological mindset of the employee, tends unjustified delinquency in the behavior or performance of duties, by which the employee renders himself unbecoming of a railway or government servant, by virtue of provision of The Railway Services (conduct) Rules, 1966. Such delinquent employee will be dealt according to THE RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES, 1968, hereafter referred as D&AR.*

**Keywords-** Article.311(1) of the Constitution of India -Delinquent employee- Domestic enquiry -Enquiry Officer- -Minor and Major penalty- Misconduct.

## I. INTRODUCTION

Domestic enquiry may be defined as procedure of employer led investigation aimed at discovering facts and information about a situation in which an employer has accused an employee of misconduct.

Domestic Enquiry essentially means an enquiry into the charges of indiscipline and misconduct framed against a workman or an employee and the term “domestic” clearly suggest that it is a purely internal matter between an employer and his employees.

## II. DOMESTIC ENQUIRY VIS-A-VIS DEPARTMENTAL ENQUIRY

The two are analogous to each other, rather with a slight difference. Many may get confused by the use of words "Departmental Inquiry" and “Domestic enquiry”. Generally, the term Departmental enquiry is used in government departments or public sector Undertakings, whereas the term ‘Domestic enquiry’ refers to enquiry conducted by the employer or on behalf of the employer in Industries and private sector Undertakings. In some Government departments, there is an ancillary wing of department called Investigating or enquiry department in certain State or Central Government, entrusted with sole responsibility of enquiry or investigation of facts in question and the enquiry conducted by such department is

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referred as "Departmental Inquiry" Both follow the same principles of natural justice and the procedure laid down under disciplinary regulations or standing orders and both refer to in-house enquiries only, conducted by the establishments, whether in private sector or public sector. The domestic enquiry in Indian railway is generally referred as Departmental enquiry, though there is no separate department for conduct enquiry of facts in question.

### III. PRINCIPLES OF NATURAL JUSTICE

Principles of natural justice are aimed to secure justice and prevent miscarriage of justice. It is based on two main principles

- *Nemo in propria causa judex, esse debet* – No one should be made a judge in his own case, or the rule against bias.
- *Audi alteram partem* – Hear the other party, or the rule of fair hearing, or the rule that no one should be condemned unheard.

Above principles of Natural justice also enshrined in our Constitution. Article 311 (1) of the Constitution of India provides safe guard to employee by which, "No person who is a member of civil service of the Union or an all India service or a civil service of a state or holds a civil post under Union or State shall be dismissed or removed by an authority, subordinate to that by which he was appointed" and Article 311 (2) of the Constitution of India provides that "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"

Prior to 1963 there were two safe guards, available to the employee as :

Firstly, when charge is enquired and secondly at the stage of proposed imposition of punishment. But the 15th Constitutional amendment(1963), curtailed the scope of second safe guard and the opportunity of to be heard was confined to first only ,as the evidences have already produced at the first stage. The evidence which are produced at the first stage will be confirmed and no further opportunity will be given at the time of determination and imposition of the quantum of punishment

THE RAILWAY SERVICES (CONDUCT) RULES, 1966 which prescribes certain standards of conduct that every railway employees shall be abide and cultivate. According to Section 3(1)]of above rules, every railway servant shall at all times-

- Maintain, Absolute integrity; Devotion to duty; high ethical standards and honesty; political neutrality accountability and transparency; responsiveness to the public, particularly to the weaker section; courtesy and good behavior with the public;

- Commit himself to and uphold the supremacy of the Constitution and democratic values;
- Declare any private interests relating to his public duties and take steps to resolve any conflicts in a way that protects the public interest;
- Defend and uphold the sovereignty and integrity of India, the security of the State, public order, decency and morality;
- Do nothing which is unbecoming of a railway servant;
- Promote the principles of merit, fairness and impartiality in the discharge of duties;
- Take decisions solely in public interest and use or cause to use public resources efficiently, effectively and economically; and
- Not place himself under any financial or other obligations to any individual or organisation which may influence him in the performance of his official duties;

Accordingly under the exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President makes the following rules, namely:-THE RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES, 1968.

Hence a railway servant shall always and at all times-maintain absolute integrity and devotion to duty. He / she should not exhibit such a misconduct or do things, which renders him /her unbecoming of a railway or government servant.

The term ‘misconduct’ is not defined in any legislation governing labour laws in India. However Sri Ramnathan Ayyer, explicits the term misconduct as follows “The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed.....”[1]

The Apex Court held that a mere element of judgment or carelessness or mere negligence in the performance or carrying out of duties does not come within the ambit of the term “misconduct”. [2]

Indian railway one of the largest employment generator in the world, provides employment to over 12million workers. The railway employees perform their duties round the clock over diversified geographical regions. The hardship in performance, sometime the emotion and specific psychological mindset of the employee, tends unjustified delinquency in the behavior or performance of duties, by which the employee renders himself unbecoming of a railway or government servant, by virtue of provision of The Railway Services (conduct) Rules, 1966.

Such delinquent employee will be dealt according to THE RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES, 1968, hereafter referred as D&AR.

#### IV. TYPES OF PUNISHMENTS

Punishments under D&AR are of two types.(Rule.6).They may be *Minor penalty* Rule 6(i)to (iv) and *Major penalty* Rule 6(v)to(ix).

In case of *Minor penalty*, by which the action of the delinquent employee may be (i)Censured,(ii)his/her promotion may be withheld for specific period, (iii)Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders; (iii)a- his/her privilege passes/ privilege ticket Orders[3] or both are withheld ,(iii)b- Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without adversely affecting his pension and (iv) Withholding of increments of pay for a specified period with for directions as to whether on the expiry of such period this will or will have the effect of postponing the future increments of his pay.

In case of *Major penalty*, by which the action of the delinquent employee will invite an action by the disciplinary authority as below:

(v) Save as otherwise provided for in clause (iii-b) reduction lower stage in the time-scale of pay for a specified period, with directions as to whether on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay.

(vi) Reduction to a lower time scale of pay, grade, post or service, without further directions regarding conditions of restoration to the or post or service from which the Railway servant was reduced seniority and pay on such restoration to that grade, post or service (vii) Compulsory retirement;

viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration

(ix) Dismissal from service which shall ordinarily be a disqualification employment under the Government or Railway Administration

#### V. STAGES OF DISCIPLINARY ACTION

Rule, 9(10) of the D&AR provides that- No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held. Whereas for penalties under Rule 6(i) to (iv) holding an enquiry as in the manner laid down in Rule9 depend upon the opinion of

the disciplinary authority and is of the opinion that such enquiry is necessary.

### **Notice to delinquent Employee**

After receiving the complaint or report against the delinquent employee, the disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior in form of Charge Sheet in SF(Standard Form)along with a list of documents and witnesses by which each article of charge is proposed to be sustained, giving an opportunity of 10 days' time to submit a written statement of his defense by the Railway servant or such further time as the disciplinary authority may allow. In the proceedings in D&AR, various types of Standard Forms are used by the Railway administration.

#### Standard Forms in of D&A R. proceedings.

Standard Form No.1	Order of suspension
Standard Form No.2	Deeming Railway Servant Under Suspension
Standard Form No.3	Certificate to be furnished by suspended Official, for claiming subsistence allowance, stating that during suspension, he was not employed anywhere.
Standard Form No.4	Revocation Of Order for suspension or Deemed suspension order
Standard Form No.5	Standard form of Major Penalty Charge sheet
Standard Form No.6	Form for refusing permission to inspect Document to the employee ,giving reasons for such refusal
Standard Form No.7	Standard form of order relating appointment of Inquiry officer
Standard Form No.8	Form for appointment of Presenting Officer
Standard Form No.9	Cancellation by Railway Board
Standard Form No.10	Standard form of order for taking disciplinary action in Common Proceedings
S. F. No.10(a)	Appointment of Inquiry officer in Common Proceedings
S. F.No.10(b)	Appointment of Presenting Officer in Common proceedings
Standard Form No.11	Standard form of memorandum of charge for imposing minor Penalty
S. F. No.11(a)	Converting Minor Penalty to Major Penalty
S. F.No.11(b)	Conducting enquiry in Minor Penalty.
S. F. No.11(c)	Converting Major Penalty to Minor Penalty

Standard Form No.12	Form of Memorandum to be issued to an employee in a criminal charge and action is proposed to be taken.
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If, the copies relevant documents of charges not supplied, then the Railway servant, if desires to inspect the same for the preparation of his defence, he may do so, within ten days from the date of receipt of the articles of charge to him and complete inspection within ten days thereafter and shall state whether he desires to be heard in person. Explanation by the Employee in defense

After receiving the documents ,the employee shall submit his written statement of defence upon which the discipline authority consider the same accordndly he will impose penalty ,in case discipline authority decides that an enquiry is necessary for the article of charges not admitted by the employee appoint an enquiry officer for the purpose of fact finding.(S.F.7)

An Enquiry Officer is an agent of the Disciplinary Authority on a fact finding mission. The principles of natural justice imply “fair hearing”, “unbiased judgment” and “clear speaking order”. However, unless it is unavoidable, the disciplinary authority should refrain from being the Inquiry Officer and should instead appoint another officer for the purpose of conducting inquiry.

The enquiry Officer so appointed should not be interested in the subject matter of the inquiry in any manner, should not be biased, a witness in the proceedings, have expressed an opinion about the merits of the case and should be sufficiently senior to the charged official or employee, to evoke confidence of all concerned. An enquiry officer should be higher in status to that of the officer who conducted the fact finding inquiry. This will eliminate the possibility of the Inquiry Officer being influenced by the findings of the superior officer. The main functions of an Inquiry Officer are three fold ,(a)Recording both oral and documentary evidence(b) evaluate evidence and (c) to give his findings.

He is in no case to comment on the quantum of penalty in cases where the charges are proved as that would amount to ultra-virus to the function of the Disciplinary Authority. The most crucial facet of the personality of the official conducting the departmental enquiry is his impartial approach, as he is performing a quasi-judicial function. His conduct must be above board so much so that he should not merely be impartial but also seen to be so, to ensure that the inquiry commands the confidence it deserves.

In cases investigated by the vigilance a Presenting Officer(PO) may be appointed, who shall be entitled to cross examine the witnesses of the delinquent employee, which cannot be adopted by Enquiry officer He is expected to conduct the enquiry in an impartial,

unbiased, fair way with open mind.

If the delinquent employee objects to the enquiry officer conducting the enquiry on the ground that the enquiry officer has a prejudice or bias against him, can always make an application to the concerned authority for the change of the enquiry officer and the enquiry officer should refer the matter to the disciplinary authority, before conducting the enquiry.

## **VI. DEFENSE COUNSEL**

When the charged employee is unable to defense his case at the time of enquiry of his own, he can present his case with the assistance of any other Railway servant employed on the same Railway as that on which he is working. The defense counsel should fulfil the conditions as laid down in D&AR. "Professional lawyers" shall not be permitted to act as defense helpers in D&AR proceedings. However official of a recognised Railway Trade Union of the same Railway Administration, being a full time union worker of Union, on which he is working may also be engaged as defense helper in the case of a non-gazetted Railway servant.

### ***Holding an enquiry***

After nomination of such assistance and other necessary preliminaries are completed a date for enquiry shall be fixed and informed to the employee, which is in general not exceeding a time of one month from the date of appointment of Enquiry Officer. The delinquent employee shall appear in person.

### ***Report by Enquiry Officer***

When proceedings in enquiry are over, which involves, taking evidence and recording the arguments, the Enquiry Officer writes his report and submits it to disciplinary authority, along with the records of the inquiry and becomes functus officio.

The report thus submitted by the Enquiry Officer should be conclusive of the enquiry and should depict, his findings on each of the charges, supported by reasons therefor and should indicate whether the charge(s) is/are fully established, partially established or not established. The scope of the enquiry should be strictly limited to the charges as mentioned in the charge-sheet and which are not admitted by the accused. (Rule 915.2).

Sometimes the delinquent employee may seek permission to inspect the documents, such as statements of witnesses' recorded earlier or other documents he considers for his defence or police investigation report or fact finding reports etc. The enquiry officer may allow the employee except when he considers them irrelevant or holder not consider them in public interest to produce, in such instances he can refuse the permission to inspect Document to the employee, but giving reasons for such refusal in a prescribed Form (SF.6)

A copy of the Inquiry Report shall be furnished to the accused Official. The report of enquiry

help the disciplinary authority in arriving at the final decision. None of the constituents of process of enquiry i.e., enquiry officer or presenting Officer or Defense Counsel or assistance and the witnesses help or should interfere with disciplinary authority in arriving at final decision.

## **VII. IMPOSITION OF PUNISHMENT**

The disciplinary authority shall after considering the inquiry proceedings shall pass an order as it it deems to fit .He may sometime seek the advice of the Union Public Service Commission to determine what penalty, if any should be imposed on railway servant in case of grievous delinquency by the accused employee. The order finally passed by the disciplinary authority should be speaking order i.e., decision arrived, on application volition of mind, basing on the facts finding and track record of service put by the delinquent employee and should be passed giving reasons there for ,which are not liable to be quashed by the Court of law.

The orders of imposing penalty shall be communicated to the employee against whom the penal order is passed.

## **VIII. APPELLATE AUTHORITIES**

Under Rule 19 of D&AR there is provision of Appellate Authority

A railway servant, including a person, ceased to be in Railway Service may prefer an appeal against all or any of orders to the Authority who is superior to, the disciplinary authority, who passed the orders imposing penalty. Rule 18 of D&AR specifies the orders on which appeals may be preferred.

## **IX. CONCLUSION**

When the whole world singing the peens of privatization, there are ever possibility of violation of workers' right especially, job security. Though the policy of Hire and fire cannot be implemented directly to formal sector, a mere delinquency by the employer may attract heavy penalty. The principles of Natural Justice safeguards the concept of Domestic Enquiry, which is based on these very sound principles. Getting into litigation is neither comfortable choice for the employers nor the employees by which not only the time and energy are wasted but also delays the outcome or fruitful result. This entire system has been primarily made to protect the interests and rights of the workers in the age of rising industrial disputes in the guidelines of social justice

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**X. REFERENCE**

[1] *P. Ramanatha Aiyar "The Law Lexicon", Reprint Edition 1987 at p.821*

[2] *State of Punjab v. Ram Singh Ex. Constable, 1992 SCR (3) 634.*

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