

# Handling Disciplinary Proceedings by Employers

**“A disciplined employer is the soul of the army of employees. It makes small numbers formidable, procures success to the organization and esteem to all part of it”**

The employer-employee relationship is based on the foundation of mutual trust and confidence. Unlike a typical contract, breach of an employment contract by an employee often results in investigation into the employee's alleged breach or misconduct and a consequent disciplinary action leading up to termination in cases of serious misconduct. Conducting a disciplinary investigation into an employee's misconduct damages this relationship of trust and confidence and even in situations of misconduct not being proven the employment relationship is likely to come to an end. As an employer it is important to understand the best practices and procedures and the legal implications associated with a disciplinary proceeding. The most common pitfall is an unplanned investigation or lack of fair procedures and proper safeguards giving rise to claims of unfair dismissal, mental harassment, defamation and damages by the delinquent employee. If the delinquent employee in question happens to be a senior level or key employee, the dynamics become more complicated because the employer has to keep in mind additional factors such as the delinquent employee's access to confidential information, intellectual property, trade secrets and the risk of solicitation of clients, vendors and staff.



In this article we have examined the legal framework governing disciplinary proceedings, highlighting critical issues and legal aspects relevant to handling a disciplinary proceeding in an appropriate and correct manner.

### **Disciplinary Proceedings under Labour Laws**

In India, there is no prescribed procedure to conduct disciplinary proceedings under labour laws. However, there are labour legislations specifying the acts and omissions that would constitute misconduct on the part of the employee and are as follows:

- (i) Industrial Employment (Standing Orders) Act, 1946 ('IESO Act') - The IESO Act is applicable to workers employed in an Industrial establishment employing more than 100 employees and such number would differ from state to state. The IESO Act prescribes the acts or omissions that could be considered as misconduct by an employee. The employer can initiate disciplinary proceedings for such acts or omissions by an employee. However, this list is not exhaustive and would include other acts and omissions as misconduct.
- (ii) State specific Shops and Establishment Act ("S&E Act") - The state specific S&E Act is applicable to employees employed in shops and establishment. The state specific S&E Act prescribes the acts and omissions that constitute misconduct on the part of the employees. An employer has a right to terminate the employee on grounds of misconduct without providing any notice.

It is worthwhile to mention that the Hon'ble Supreme Court of India in the case of **State of Punjab vs Ram Singh**<sup>1</sup> has observed that *“the word “misconduct” though not capable of precise definition depends on the performance and effect on the discipline and nature of 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 nor mere error of judgements, carelessness or negligence in the performance of the duty; the act complained of bears forbidden quality of character”*.

### **Conduct of Disciplinary Proceedings**

Employers should ensure that disciplinary proceedings are conducted in accordance with the principles of natural justice so as to avoid the possibility of being vulnerable to judicial scrutiny. In this regard, the Hon'ble Supreme Court of India in the case of **Sur enamel and Stamping Works (P) Ltd vs their Workmen**<sup>2</sup> held that a domestic enquiry cannot be said to have been properly held unless:

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

While conducting disciplinary proceedings an employer must consider the above essentials of fair enquiry. Further, the Apex Court has also held that no courts including high court and Supreme Court shall interfere with the findings recorded at the domestic enquiry but if the finding of 'guilt' is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

### **Implications of improper disciplinary proceedings upon the employer**

#### **Improper disciplinary proceeding**

The Hon'ble Supreme Court of India in the case of **Union of India vs Madhusudan Prasad**<sup>3</sup> held an enquiry to be invalid as the report was not furnished to the employee and no show cause notice was served on him. The principles of natural justice were not followed and the employee was terminated without following the due course of enquiry. Such enquiry when challenged in the appellate court directed reinstatement of the employee.

In this regard, it is pertinent to note that reinstatement of services and payment of back wages could also be directed by the court depending on the facts of the case wherein the employee has been illegally terminated.

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<sup>1</sup> AIR1992SC2188

<sup>2</sup> AIR 1963SC1914

<sup>3</sup> Civil appeal no. 5909 of 2002

The disciplinary committee should also consider the quantum of punishment to be inflicted on different employees for the same offence. In such an instance, the Courts in India have clarified that different punishment for the same offence would amount to a violation of right to equality i.e. Article 14 of the Constitution of India for such employee and could be challenged by such employee in court.

#### Disciplinary proceedings pending criminal proceedings

The employer while conducting or initiating any disciplinary proceeding shall also consider if there is any ongoing criminal proceeding against such employee for a similar offence. In such an instance, the Courts in India have held that the only ground constituting a valid ground for staying the disciplinary proceedings is that “*the defense of the employee in the criminal case may not be prejudiced*”. The stay of disciplinary enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings cannot be, and should not be a matter of course and would depend on case to case.

In order to minimize the risk of employee claims in the aftermath of a disciplinary proceeding the employers have to be careful about following fair procedures and maintaining proper records of the proceedings. The first and foremost step is to have in place a comprehensive policy on employee misconduct and disciplinary inquiry procedures prepared in accordance with applicable labour laws and legal principles which have evolved over time. Prior to initiating an inquiry an employer should consider taking preparatory steps and mapping the stages of an inquiry, keeping in mind the legal implications involved. Employers can also consider capacity building workshops for HR managers, line managers and compliance officers.

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