



Views of Various Stakeholders About Disciplinary Proceedings in Industries – An Analysis

KEYWORDS

Disciplinary Proceedings, standing orders, natural justice, employees' perception, suspension pending enquiry

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ABSTRACT

Disciplinary proceedings in the manufacturing industries is initiated aiming to correct the erring employees whose behaviour is not aligning with the culture, code of conduct, standing orders and other terms and conditions of employment framed and implemented by the management from time to time. Needless to say, initiating the disciplinary proceedings is the prerogative of the employer but at the same he is expected to implement the said process within the framework of principles of natural justice. The rules of principles of natural justice is very exhaustive and subjective and hence a fair, reasonable and neutral approach to be adopted by the management in the course of disciplinary proceedings. However, in reality, the survey conducted among the workmen in the manufacturing industries at SIPCOT reveals that the perception of the workmen are not positive towards at various steps of the disciplinary proceedings. In this context, this paper attempts to seek the views of various stake holders, who are experienced in disciplinary proceedings and managing the industrial relations for more than 2 decades, about the outcome of the survey.

INTRODUCTION

The objective of disciplinary proceedings is to maintain discipline within the organization and prompt the employees to adhere to the policies, rules and regulations of the organization. The main philosophy ideally lying behind is to improve the job related behaviour and performance of the employee. Hence, any employee deviates from the values, policies, rules and regulations of the organization will be viewed adversely and such employee will be required to undergo the disciplinary proceedings initiated against him for the misconduct alleged against him.

It is a general apprehension of the workmen at large and the trade unions is that the management uses disciplinary proceedings as a tool to victimize the workmen who are actively involved in the trade union activities. Further the workmen and the trade unions strongly apprehend that the management dilutes the solidarity of the unity of the workmen when they form the union and collectively bargain for the wages and other service conditions. Due to this apprehension, most of the times the management finds very difficult even serving the charge sheet to the delinquent workman because the unions oppose such actions vehemently with a perception that initiation of disciplinary proceeding itself will certainly lead to dismissal of the said workman. During such situations, both management and union maintain their own stand without reaching any consensus resulting into dead lock. This will subsequently precipitate to strikes and lock outs affecting the industrial peace, harmony, productivity of the organization and ultimately, needless to say, economy of the country.

It is a well settled principle through the judgements of various High Courts and Supreme Court of India that the Disciplinary Proceedings to be conducted in accordance with the Principles of Natural Justice viz., No one shall be a judge in his own cause and hear the other side or no one shall be condemned unheard. Though the interests of the workmen are protected against arbitrary action or victimization by the employer, the workmen at large and the

trade unions are not having confidence in the process disciplinary proceedings and lack trust on the management, which is a critical element in the industrial relations scenario.

In the above context, a study was conducted at SIPCOT, Cuddalore by providing questionnaire to the workmen employed in various manufacturing industries there and having analyzed the outcome of the study, it has been inferred that the perception of the workmen are not very positive towards most of the steps in the process of disciplinary proceedings.

REVIEW OF LITERATURE

Disciplinary Proceedings

Malhotra O.P., (2010) articulated that there is no procedure prescribed for disciplinary action, either in the Industrial Disputes Act, 1947 or in the rules made there under which should be complied with before inflicting disciplinary punishment upon an industrial employee. Perhaps, the only statutory provision relating to an enquiry is Item 3 of Schedule 2 to the Industrial Disputes Act, which gives Labour Courts power to deal with "discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed". Apart from this, there seems to be no statutory provision, and this entire branch of labour laws is the creation of our socially conscious judiciary, which has done pioneering work in this area of study.

Misconduct

The expression 'misconduct' has not been defined either in the Industrial Disputes Act, 1947 or in the Industrial Establishment (Standing Orders) Act, 1946. The dictionary meaning of the word 'misconduct' is 'improper behaviour, intentional wrong doing or deliberate violation of a rule of standard of behaviour'.

Charge Sheet

In State Bank of Bikaner and Jaipur Vs Prabhu Dayal Grower (1995), the court held that the charge sheet is the vital

and an important document seeks to fulfill one of the basic postulates of the rules of natural justice that a fair and reasonable opportunity of being heard should be given to the person assigned which obviously would not be possible unless he is specifically told of the accusations leveled against him.

Suspension Pending Enquiry

Where the charges are of serious nature, the employer may suspend the delinquent workman pending the enquiry. In this connection, a Division Bench of the Delhi High Court in Delhi Electric Supply Undertaking Vs GP Satsangi (1984) has struck a note of caution in exercising the power of suspension that the power of suspension has to be exercised with circumspection, care and after application of mind. The disciplinary authority must make a fair and proper assessment of the matter in the given circumstances which in the light of the material available and collected during the primary investigation would lead to the likelihood of removal or dismissal of the employee from service. A proper judgment exercised would prevent unnecessary harassment and humiliation of suspension.

Natural Justice

The barest requirement of a domestic enquiry is that the charged workman must be given a fair chance to hear the evidence in support of the charge and put such relevant questions by way of cross - examination as he desires and then he must be given a chance to rebut the evidence led against him. In Central Bank of India Vs Karunamoy Banerjee (1967), the Supreme Court observed that if the allegations in the charge sheet are denied by the workman, it is needless to state that the burden of proving the truth of allegations will be on the management, and the witnesses called by the management must be allowed to be cross examined by the delinquent workman and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea.

OBJECTIVES

- To seek the views of various stakeholders viz., human resources professionals, domestic enquiry officer, advocate and the union leader about the perception of the workmen of manufacturing industries at SIPCOT, Cuddalore;
- To validate their views with the perception of the workmen
- To offer suggestions for the manufacturing organizations at SIPCOT, Cuddalore to improve their approach in disciplinary proceedings.

METHODOLOGY

The views of the stake holders sought through direct interview and telephonic interview. Various questions, based on the perception of the workmen employed in the manufacturing industries at SIPCOT, Cuddalore and participated in the survey, were placed before the stake holders. The replies and views of the stake holders have been restated in writing and sent by email to them and sought their concurrence. Post obtaining of their concurrence, the excerpts of their views have been used in this article for discussion.

The first segment of stakeholders is the human resources professionals who are working in the manufacturing industries and having exposure on disciplinary proceedings and managing the industrial relations for more than two decades. The second segment of stake holders is the advo-

cates cum advisor in industrial relations and labour laws having more than 25 years of experience in the industrial domestic enquiry and industrial adjudication before the Labour Courts. The third segment of stakeholders is the union leader of CITU who are playing vital role in determining industrial relations in the manufacturing industries at SIPCOT, Cuddalore.

The details of the first segment stakeholders are: (1) Mr. Fredrick Castro, Head – Employee Relations, Prolec GE, Chennai, (2) Mr. Suresh V.G., Head – HR, Seshasayee Paper & Boards Limited, Erode, Tamil Nadu, (3) Mr. Narasiman K.P., Head – HR, Magick Woods Exports Pvt Limited, Maraimalai Nagar, Chennai and (4) Mr. Ranganathan, R.S., Senior Manager – Employee Relations, Hyundai Motor India Limited, Chennai.

The details of the second segment of stake holders are: (1) Mr. Babu K., Advocate cum Advisor- Industrial Relations & Labour Laws, Pondicherry and (2) Mr. Vedanayagam P.J.X., Advocate and Labour Law Practitioner, Cuddalore, Tamil Nadu.

The third segment of stake holder is Mr. Karuppayan P., District Secretary, Centre of Indian Trade Unions (CITU), Cuddalore District, Tamil Nadu.

DISCUSSION

1. The survey data reveals that 77.7 % of the respondents say that the copy of the standing orders is not provided to the workmen. Fredrick Castro viewed that on demand by the workmen a copy of the standing orders to be provided to them. Similarly, the display of the standing orders in the conspicuous places of the industrial establishment is not implemented though it is a statutory requirement under the Act. Vedanayagam P.J.X admitted that the copy of the standing orders is not displayed in most of the organizations. He added that it is advisable to translate the standing order in the vernacular language known to the workmen and displayed in the factory. Fredrick Castro specifically emphasized that display means neatly displayed and should be in a readable condition. Adding to this statement, Babu K viewed that some of the human resources professional themselves are not aware of this requirement and also the enforcement authorities under the Act is not effective. From this, it is inferred that the perception of the workmen pertaining to providing copy of the standing orders and displaying the same in the factory is validated and found to be correct.
2. The respondents to the tune of 63.6 % had expressed that they are not aware of the gravity of the misconduct. While speaking to Babu K, he confirmed that since the implementation of standing orders is not effective as stated above, there is reason to believe that the workmen lack awareness about the gravity of the misconduct. Vedanayagam P.J.X told the author that the management should take effort to train the workmen and make them to understand the list of commissions and omissions constitute misconduct under the Act. Adding to the above statement, Karuppayan P admitted that the union has got the responsibility of educating the members of the trade union pertaining to misconduct. He also added that the management has the primary responsibility in this regard.
3. Regarding the complaint, 78.7% of respondents expressed that normally copy of the complaint is not provided to the delinquent workman. Though Suresh V.G. is in favour giving copy of the complaint to the delin-

quent workman, Ranganathan R.S had a distinct view in this regard. He admitted that ideally copy of the complaint to be given to the delinquent workman. But normally the management will have the apprehension that the complainant will be influenced by the union and the delinquent workman by threatening or by other means to dilute the severity of the charges. Hence, the management will not give copy of the complaint. However, the management can hold the complaint document till enquiry only and during the enquiry it has to be marked as management document and the delinquent workman will have access to the document during that time. Vedanayagam P.J.X affirmed the said view and he stated that it is enough that the copy of the complaint may be given at the time of enquiry. Babu K also emphasized that copy of the complaint has to be given at least at the time of enquiry. Also, both the advocates have categorically told that copy of the complaint to be provided to the delinquent workman in the vernacular language. However, concretizing the perception of the respondents, Karupaiyan P negated the apprehension of the management that the complainant would be threatened. According to him, if copy of the complaint is not given along with the charge sheet, it has to be given at the time of enquiry. Once the delinquent workman receives copy of the complaint he would pray time to study the complaint and prepare his defence. The enquiry officer might give a minimum of week's time and that duration is enough for the delinquent workman and the union to threaten the complainant, if they really wanted to do so. In this context, he criticized that the apprehension of management is concocted and imaginary. He reiterated that copy of the complaint must invariably accompany the charge sheet enabling the delinquent workman to prepare his defence and non adherence to this requirement would amount to denial of reasonable opportunity to the delinquent workman. Moreover, he added, the objective of insisting copy of the complaint is to ascertain whether the charge sheet is prepared based on the complaint since most of the times the charge sheet is issued without the complaint and the complaint is prepared with back dated.

4. While discussing about the preliminary enquiry, Babu K and Karupaiyan P told that the objective of the preliminary enquiry itself to ascertain whether there is any prima facie case against the workman concerned. In this context, it is desirable that an opportunity may be given to the said workman and seek his views. This will help the management to avoid taking hasty decision and issuing the charge sheet unnecessarily. Affirming the above statement, Vedanayagam P.J.X reiterated that if preliminary enquiry is initiated, it is mandatory that an opportunity to be given to the said workman and seek his views.
5. About 65.8 % of the respondents have indicated that the charge sheet is not clear and specific. Supporting to this perception of the respondents, Babu K while sharing his experience has confirmed that approximately in 40% of the cases, the charge sheet is not clear and it does not contain all the details like date, time, place of occurrence of the incident etc., It is also not specific about the alleged charges. To illustrate, if the charges are pertaining to using abusive language by the delinquent workman against the co-workman or the superiors, the verbatim words of the abusive language are not stated in the charge sheet. According to Vedanayagam P.J.X, the charge sheet to be clear and specific and mere technical flaws like not mentioning

the exact provisions of the misconduct in the charge sheet is condoned by the courts in most of the cases. According to the court, the content of the charges as mentioned in the standing orders is more important.

6. The respondents to the tune of 75 % expressed that the management suspend the delinquent workman pending enquiry, in order to paralyze the union activities. Also, 71.4% of the respondents expressed that the suspension pending enquiry is not implemented considering the gravity of the misconduct. On citing this outcome to the interviewers and asked the reason, Ranganathan R.S viewed that it is part of the management strategy because at times management is compelled to take such action against some of the workmen who work against the organization affecting the interest the organization and the employees at large. Also, he added that the management never charges any workman on false or fake grounds. The action will be taken against the alleged misconduct and based on the complaint only. However, in some companies, as a part of industrial relations strategy, it has been a practice to put an employee on suspension pending enquiry even on a flimsy ground in order to put some sort of pressure on union or a group. Babu K told that it is true to the extent of 10 % to 20% of the cases. This is due to the organization culture and attitude and approach of the disciplinary authority and human resource professionals. Vedanayagam P.J.X while reacting to this question categorically replied that when the situation warrants, the management is at liberty to suspend the delinquent workman pending enquiry. Management is the best judge to decide the circumstances and invoke the suspension. The delinquent workman, if aggrieved, may approach the appropriate forum and establish that the suspension is mala fide. In this regard, Karupaiyan P has strongly viewed that the management suspending the workman pending enquiry to psychologically destabilize the said workman and other workmen who are active trade unionists. The approach of the management in this regard is to discourage the right to form association and collective bargaining.
7. Regarding the appointment of enquiry officers and representation of parties, Babu K and Vedanayagam P.J.X are in the opinion that it is a normal practice by the management to appoint advocate as an enquiry officer. The advocate will be presumed as neutral person and expected to conduct the enquiry as per the principles of natural justice. There is lot of pronouncements by Supreme Court in this regard. Both of them have further viewed that the management normally will not concede to the request of the delinquent workman to change the enquiry officer when he has an apprehension that the enquiry officer will not conduct the enquiry in fair and reasonable manner and he will not get justice in the enquiry. Vedanayagam P.J.X added that such apprehension is inevitable. The delinquent workman, if aggrieved by the outcome of the enquiry, he can very well seek remedy under Section 11A of the Industrial Disputes Act, 1947. In this regard, Narasiman K.P added a different dimension that the delinquent workmen and the unions, as a part of their strategy, invariably question the validity of the appointment of enquiry officer. Almost in every enquiry it is an issue faced by the management. Due to this approach of the union, the management is unable to distinguish between genuine request and fake request of the union and the delinquent workman in this regard. Hence, such request is not normally considered. While discussing about the representation by the legally trained

person on behalf of the delinquent workman, Babu K told that in case the management representative is a legally trained person, the delinquent workman to be permitted to be represented by an advocate or legally trained person. Ranganathan R.S while expressing a distinct view he told that the representation for the delinquent workman to be governed by the provisions of standing orders. He stated that in Hyundai Motor India Limited, as per the provisions of the Certified Standing Orders, the delinquent workman is permitted to have a co-workman belong to the same shop floor where the delinquent workman is also working. Alternatively, he will be permitted to be assisted by an office bearer of the trade union recognized by the management. In view of Karuppayan P, most of the workmen are not aware of the domestic enquiry processes and not competent enough to understand the management documents and lack ability to cross examine the management witnesses. This will hold good for the co-workman also who participate in the enquiry along with the delinquent workman. Hence, he urged to amend the Standing Orders Act incorporating a provision enabling the delinquent workman to bring an advocate or the office bearer of the trade union including the outside office bearer to assist him in the enquiry.

8. Among the total population of the respondents, 82.6 % of them have the perception that the punishment does not commensurate to the gravity of the misconduct and it is shockingly disproportionate. Also, about 74.7% of the respondents viewed that the management never concede to the request of the delinquent workman to alter, reduce or cancel the proposed punishment. Strengthening the perception of the workmen, Narasiman K.P viewed that it is true that the proposed punishment may not at times commensurate to the misconduct. Moreover the proposed punishment is pre determined at the beginning of the disciplinary proceedings. This is being done to weed out the trouble makers who are detrimental to the interest of the organization and spoiling the smooth industrial environment. In his view of Ranganathan R.S, generally in most of the situations, the quantum of punishment is being decided based on the gravity of the misconduct by the Management. However, this also depends upon the industrial relations climate of the specific company. Sometimes, due to certain unavoidable circumstances, the management will be forced to view simple misconduct very seriously and award serious punishment which might be, from the eye of law, shockingly disproportionate to the gravity of the misconduct. Regarding the request of the delinquent workman to reduce, alter or cancel the punishment, Narasiman K.P confirmed that sometimes the management may consider such request and nothing wrong in considering such request provided if the delinquent workmen realizes his misconduct, tenders unconditional apology, assures to co-operate with the management and perform his job effectively and this has been endorsed by Vedanayagam P.J.X also. On the other hand, Ranganathan R.S has given a distinct view that in general, in most of the cases, the management do not intend to cancel or reduce the punishment. However, as an exception, in certain cases, to maintain cordial relationship and for smooth industrial relations, the management may concede to the request of the union and reduces the punishment imposed on the delinquent workman. Karuppayan P categorically told that all the proposed punishments are shockingly disproportionate irrespective of the gravity and nature of the mis-

conduct. He added that all the enquiries are concluded with dismissal only which reveals that the management initiates the disciplinary proceedings with an ulterior motive of dismissing the delinquent workman from the services. Also, he told that the management is "not at all" conceding to the request made by the delinquent workman and the union to reduce or alter the punishment. He agreed that there is no second opinion about inflicting punishment to the delinquent workman if the misconduct is proved against him. He urged the management to evaluate the feasibility of inflicting various punishments provided in the standing orders commensurate to the gravity of misconduct rather dismissing the delinquent workman.

9. The respondents to the tune of 71.6 % state that the management initiates disciplinary proceedings against a workman who is a active trade unionist. Also, 82.0% of the respondents have the perception that the management uses the disciplinary proceedings as a tool to dilute the right to association and collective bargaining. While replying to the above survey, Narasiman K.P stated that it is specific to the organization and industrial climate prevailing over there. If any of the unions is very unreasonable and non co-operative to the management resulting into affecting the organization growth and the industrial peace, disciplinary proceedings is used as a tool to curb such unions and its members. Concreting to the above statement, Ranganathan R.S added that it is organization specific and depends on the industrial climate of the organization. Sometimes, when the union is not co-operating even for the reasonable requirements of the management to change the work norms or to increase the productivity, the management may give counter pressure to the union by initiating disciplinary proceedings that too on the workmen who have really committed certain misconducts. However, he added that initiating disciplinary proceedings on some workman on a false or frivolous charge is not at all accepted and that will ruin the trust that the union has on the management in the course of time. Babu K and Vedanayagam P.J.X have also confirmed that the disciplinary proceedings is used as a tool to dilute the right to association and collective bargaining and Karuppayan P affirmed the above statement.

SUGGESTIONS AND RECOMMENDATIONS

1. The human resources professionals of manufacturing industries at SIPCOT, Cuddalore, as a part of best HR practices, should translate the copy of the certified standing orders in vernacular language and provide to all the workmen, as practiced in Hyundai Motor India Limited, Chennai.
2. The copy of the certified standing orders should be displayed in English and in the vernacular language known to majority of the workmen and displayed in a neat and readable condition at the conspicuous places and in the shop floors of the factory. Since it is a statutory requirement, the management has to comply with this requirement and in the event of non adherence, the union shall intervene and ensure compliance.
3. As suggested by Vedanayagam P.J.X, the management should take effort to train the workmen and make them to understand the list of commissions and omissions constitute misconduct under the Act. Also, as reiterated by Fredrick Castro and agreed by Karuppayan P, the union also has to play a major role in educating the workmen about the standing orders, nature and severity of misconduct and the Industrial Disputes Act.

4. The union has to play a vital role in co-operating with the management to conduct the domestic enquiry smoothly. It has got high responsibility of removing the apprehension of the management that the union and the delinquent workman influence the complainant and the management witnesses. Unless the union to do so, it is not reasonable on the part of the delinquent workman and the union to expect copy of the complaint and the list of management witnesses. On the other hand, the management also cannot take shelter always under this apprehension and deny copy of the charge sheet. When the management initiates the domestic enquiry against a workman, the burden of proof lies on the management only to prove the charges and hence the management should take all precautions to prove the charges rather merely raising an apprehension and shifting the blame on the delinquent workman or group of workmen or trade union.
5. The management shall ensure that the copy of the complaint, charge sheet, notice of enquiry, management documents filed in the enquiry, enquiry proceedings, enquiry report, standing order and all the day to day communications are provided to the workmen in the vernacular language.
6. As suggested by Babu K, it is desirable that an opportunity may be given to the workman in the preliminary enquiry and seek his views. This will help the management to avoid taking hasty decision and issuing the charge sheet unnecessarily.
7. The management shall ensure that the charge sheet is very specific and clear having all relevant details and very importantly the nature of misconduct to be very specifically mentioned, as stated in the certified standing orders.
8. The management shall ensure the adherence of principles of natural justice by providing reasonable opportunity to the delinquent workman at every stage of the disciplinary proceedings.
9. Considering the competitiveness prevailing in the global market, the union, its office bearers and the members have got high responsibility in co-operating with the management to increase the productivity norms, producing the goods at the affordable cost without compromising on quality standards. They should also actively get involved in all the initiatives taken by management pertaining to 5S, First Aid, Safety, Environment, Quality Circles, Kaizens and obtaining of various ISO Certifications. By showing such positive gesture by the workmen and the trade union, the management will also change its perception and have very constructive and positive approach in dealing the disciplinary proceedings.
10. The workmen shall realize the necessity of forming new or additional unions, when already couple of unions is recognized by the management. Multiplicity of unions is not a healthier sign for the flourishing organization and it will add unnecessary administrative burden to the management also. The unions should be formed for the interest of the workmen at large rather to cater the vested interests or to satisfy the self ego of certain workmen. Management also should recognize the unions who are really, genuine, neutral and reasonable to both the management and the workmen.

CONCLUSIONS

To conclude, as told by Pope Leo XIII, "each needs the other; Capital cannot do without Labour. Nor Labour without Capital" should be borne in the minds of both the management and the union. In the contemporary business, the union should understand the crisis being encountered by the management in terms of hectic competition due to globalization and come forward to extend whole hearted co-operation to improve the business of the organization. By doing so, the union is not only securing the interests of the organization but it secures the interest of the workmen at large. The management also should come forward to deal with the grievances of the union and the workmen in a proactive and reasonable manner and deal the disciplinary proceedings constructively to avoid undue industrial unrest.

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