



## Role of HR Professional in Dealing Disciplinary Proceedings Constructively - An Overview

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### ABSTRACT

*The objective of the disciplinary proceedings is to maintain discipline within the organization and prompt the employees to adhere to policies, rules and regulations of the organization. The main philosophy lying behind is to improve the job related behavior and performance of the employee. Hence, any employee who deviates from the policies, rules and regulations will be viewed that he had committed misconduct and such delinquent employee will be required to undergo the disciplinary proceedings for the misconduct alleged against him. While so, it is also equally important to implement the concept of disciplinary proceedings across the organization as a process, in accordance with the principles of Natural Justice. This article attempts to reveal about the disciplinary proceedings being practiced in reality and also emphasizes the role of Human Resources Managers in implementing the process of disciplinary proceedings in a constructive way to ensure and uphold the morale of the employees who are one of the Key Business Enablers.*

**Keywords : Delinquent Employee, Misconduct, Domestic Enquiry, Natural Justice**

### Introduction

Human Resources Development is the process of enabling employees in the organization to effectively contribute for the business growth, sustainability in the market and making things happen within the specified time frame to meet the objectives of the organization. The HRD process deals with the process of competency development in employees and creation of conditions through values, policies and programmes to help the employees apply these competencies for their development and of the organization.

The competencies include Knowledge, Skill, Attitude and Values and the same may be developed in individuals, groups and communities. This is involved with various dimensions of developments such as physical, intellectual, social and moral developments. Among these developments, moral development is very pertinent to our study which deals with developing the employees to bring orderliness, discipline and cordial relationship among the group. Maintaining of orderliness and discipline among the employees is very important to ensure that one employee's comfort does not become discomfort for his co-employee or the group working in the organization. Organization is the ultimate and nobody is above the organization. To maintain this status quo and to ensure the consistent business deliverables, it is imperative on the part of the organization to develop and uphold the morale of the employees which is one of the critical factors for effectively engaging the employees in the business. To ensure this, the organization shall create conditions in terms of Values, Policies, Norms, Code of Conduct, Standing Orders and other interventions and expect that all the employees of the organization transform their attitude and align their behavior in line with the conditions established and implemented by the organization.

Having discussed various conditions above for the moral development of the employees and to maintain order and discipline in the organization, for the purpose of this study, we will scope only with the Standing Orders and the related disciplinary issues, applicable for the workmen category in any organization. Also, it is pertinent to discuss here the approach of HRD in maintaining the discipline among the workmen in the

industrial establishment through implementation of the Standing Orders and how the same causing impact on the industrial relation scenario in an organization

### Disciplinary Proceedings – An Overview

Disciplinary Proceedings is a process for dealing with job-related behavior that does not meet expected and communicated performance standards. The process features efforts to provide feedback to the employee so he or she can correct the problem. It means of reprimanding employees who fail to abide by the organization's performance standards, policies or rules. A standardized process is mandatory for any organization and to be incorporated in the Certified Standing Orders to deal with an employee who has breached the terms of employment in some way. If this procedure is not standardized and fair, the organization may face discrimination or other legal charges.

The law relating to disciplinary proceedings is almost entirely judge made law. There is no statutory provision prescribing the procedures for initiating disciplinary proceedings. The only statutory provision is available in Schedule 2 to the Industrial Disputes Act which gives Tribunals power to deal with "discharge of dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed". Apart from this, there seems to be no other statutory provision, and this entire concept is the creation of our socially-conscious judiciary, which has done pioneering work in this new field.

The Supreme Court of India has held in the matter of Powari Tea Estate Vs Barkataki (M.K) (1965) II LLJ 102 (S.C) that the disciplinary proceedings in industrial law have acquired great significance and industrial adjudication attaches considerable importance to such proceedings. Further in the matters of Rohtas Industrial Limited Vs Ali Hasan, (1963) I LLJ 253 (S.C); Associated Cement Companies Limited Vs Their Workmen, (1963), II LLJ 396 (S.C); Khardah & Company Limited Vs Its Workmen, (1963) II LLJ 452 (S.C); Provincial Transport Services Vs State Industrial Court, (1962) II LLJ 360 (S.C); Tika Ram & Sons Vs Their Workmen, (1960) I LLJ 515 (S.C), the Supreme Court has said that disciplinary proceedings is an essential condition to the legality of the disciplinary order.

The objective of the above philosophy is that the society requires industrial peace to ensure smooth production for the economic development of the country. If the workman is arbitrarily or wrongfully punished for undisclosed reasons there may be unrest and friction, which is undesirable. It is therefore in the interests of industrial peace, effective production and economic development, the delinquent workman should be punished only after he has been given a fair opportunity of defending himself. By doing so, a great deal of arbitrariness, consequential grievance and unrest is avoided.

### Proposed Model for Disciplinary Proceedings

It is 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 as under:

#### 1. *Nemo debet esse iudex in propria causa* – No one shall be a judge in his own cause.

In the matter of Sunil Kumar Ghosh Vs Ajit Kumar, AIR 1969 Cal 492, the Kolkata High Court held that the first requirement of natural justice is that a man should not be a Judge in his own cause. Further the Kolkata High Court has emphasized in the matter of Saxby Farmer (India) Ltd Vs 3rd Industrial Tribunal, (1962) 4 FLR 307 (Cal HC) that if a man is to be a judge in his own cause, the decision cannot be in good faith. It may be conceivable that a man may do full justice with the other side in spite of the fact that he is himself interested but it is held that this is not sufficient because justice must not only be done but should manifestly and undoubtedly seem to be done.

#### 2. *Audi alteram partem* - Hear the other side or no one shall be condemned unheard.

This principle emphasizes that the delinquent workman should be given a fair opportunity of adequately representing his case by hearing the evidence in support of the charge, to cross examine the witnesses produced against him and also be allowed to rebut the evidence led against him by examining witnesses including himself if he so wishes on any relevant matter.

In the light of the above principles, the broad process of disciplinary proceedings is as under:

- Disciplinary proceedings to be initiated against a delinquent workman in order to maintain and enforce discipline in the industrial establishment.
- Written complaint is the base for initiating the domestic enquiry. Without written complaint, the disciplinary authority shall not initiate domestic enquiry against any workman.
- Preliminary enquiry, as applicable, to be conducted to find out whether any prima facie case is there to initiate a detailed enquiry.
- Charge Sheet in writing to be served on the delinquent workman to ask for his explanation.
- Enquiry Officer, who is neutral and unbiased, to be appointed.
- Enquiry to be conducted by the Enquiry Officer by serving the Notice of Enquiry to the parties i.e., to the management and to the delinquent workman.
- Adequate and fair opportunity to be given to the management as well as to the delinquent employee to defend their case.
- Submission of the findings by the Enquiry Officer to the punishing authority.
- Second Show Cause Notice to be given to the delinquent workman on the proposed punishment.
- Punishment to be given based on the findings of the enquiry officer, gravity of the misconduct, the past record of the delinquent workman and the explanation submitted by the delinquent workman on second show cause notice.

Thus, by adopting the above process a conducive industrial relations will be ensured which is the prerequisite for enhancing productivity in the organization.

### Methodology

To gain an understanding about how the process of disciplinary proceedings being adopted in the organizations, a survey conducted in SIPCOT Industrial Estate, Cuddalore, Tamil Nadu. In depth interviews conducted with the HR people, trade union leaders and the labour law practitioners.

### Case Studies of the Organization Surveyed

#### Organization A

Organization A is manufacturing of specialty chemicals and formulations catering the industrial and the domestic needs with 450 employees on the roll. Due to multi union scenario, the management of the organization was adopting strategies in such a way that at least either one of the union will support the management of the organization at any point of time. While so, in the year 2007 the members of the both the unions viz., "Union A" and "Union B" have got into altercation in the workplace while on duty which has resulted into man handling of each other and workman of "Union B" was severely injured. In turn, a group of workmen of "Union B" have indulged into violent activities and thus the workmen belong to both the unions were fighting with each other. The management suspended the workmen of both the unions pending enquiry. During the enquiry, the delinquent workman of "Union B" submitted an apology letter to the management and based on the same, the management dropped the disciplinary proceedings initiated against the said workman and revoked the suspension. On the other hand, the delinquent workmen of "Union A" appealed the management to complete the process of enquiry and find out the facts and based on the findings of the enquiry officer, the delinquent workmen of the both unions to be dealt. However, the management negated the appeal of the "Union A" and also dismissed the delinquent workmen without giving a second show cause notice on the proposed punishment. The aggrieved workmen of "Union A" resorted strike in the organization due to which the organization had lost 70 % of the production for a period of 40 days. Also, when the dismissed workmen approached the Labour Court, Cuddalore, the Court condemned the approach of the management and also directed the management to reinstate the said workmen. The said award of the Labour Court was confirmed by the High Court, Chennai also.

#### Organization B

Organization B is a Pharma Industry wherein 250 workmen engaged in the manufacturing and support services out of which 180 workmen belong to "Union A" and the balance 25 workmen belong to non union category. The "Union A" submitted a Charter of Demands claiming wage increase and other benefits. During the wage negotiation, the "Union A" was not agreeing to the wage increase proposed by the management and a deadlock caused in the discussion. While so, the HR Manager of the organization carried out surprise check during the night shift on a particular day and he found that the General Secretary of the "Union A" was sleeping while on duty. The HR Manager suspended him pending enquiry. The union condemned the activity of the management and they questioned about the necessity of suspending pending enquiry. Also, the union proposed the management to initiate disciplinary proceedings, as per the Standing Orders and hence they requested the management to revoke the suspension. The management refused to revoke the suspension which resulted in illegal strike resorted by "Union A". The management further suspended nine workmen alleging that they were the instrumental to the strike. After some point of time, the management revoked the suspension of the all the workmen including the General Secretary of the "Union A" without assigning any reasons. All the ten workmen claimed the wages and the other benefits for the suspension period since the suspension was illegal. The management has negated the claims of the said workmen and having aggrieved by the decision of the management, the said workmen filed a petition before the Labour Court, Cuddalore for seeking the remedy. The Labour Court has directed the management to pay full wages and the other benefits for the suspension period on the ground that the management has not adhered to the pro-

visions of the Certified Standing Orders of the organization.

### Discussion

The organizations studied basically are chemical based industries and prone to industrial relations issues. When the issues were analyzed, it was observed that the trust level between the management and the workmen was absolutely lacking. Though both the organizations were having established guidelines for handling the disciplinary matters, they were more inclined to punish the delinquent workmen rather giving an opportunity for them to correct their behavior. Also, while awarding the punishment the management was too bias and the victimization of workmen was more explicit. In Organization A, the disciplinary authority has not considered the appeal of the suspended workman and thus violated the principles of Natural Justice. Also, the disciplinary authority has not given the second show cause notice to the delinquent workmen of "Union A" about the proposed punishment and not given an opportunity to explain their claim throughout the disciplinary proceedings due to which the Labour Court and the High Court have vitiated the complete disciplinary proceedings and directed the management to reinstate the dismissed workmen. Due to biased approach of the management, even the fit case itself turned against the management. Over and above, the management witnessed unnecessary industrial unrest which has resulted into loss of production and revenue and further tarnished the reputation among the customers since they were unable to meet the delivery schedule.

In Organization B, though the act of the General Secretary of the "Union A" was not acceptable and also it was misconduct under the provisions of the Certified Standing Orders of the organization, the inappropriate course of action adopted by the management caused adverse effect to the management. Firstly, the nature of alleged misconduct committed by the delinquent workman cum the General Secretary of the "Union A" does not warrant for suspension pending enquiry because the disciplinary authority can exercise the option of suspending a delinquent workman pending enquiry only when the act of delinquent workman adversely affect the discipline in the organization and also when the employer faces a grievous situation that they are unable to run the organization due to physical presence of the said delinquent workman. Due to inappropriate approach of the management, the workmen of the "Union A" felt that the management was trying to victimize the General Secretary of the "Union A" and break the deadlock of the negotiation by adopting unfair means which resulted into illegal strike and thus serious industrial unrest caused. Also, revoking of the suspension of all the workmen without assigning any reasons also created strong apprehension in the minds of the workmen which has proved in the Court of Law.

### Suggestions and Conclusions

Having understood and analyzed the above case studies, it is important to note that the concept of Industrial Relations cannot be ignored and it is one of the critical factors for the success of any organization. Hence, it is imperative on the part of Human Resource Managers to implement the process of disciplinary proceedings in a constructive way to ensure and uphold the morale of the employees. The primitive days have gone when the employer used the Disciplinary Proceedings as a powerful tool to press the work force and implementing the process as per their whims and fancies by conveniently neglecting the golden rules of principles of Natural Justice. Though so many judgements and awards pronounced by various courts on how to have constructive approach in implementing the disciplinary proceedings, the contemporary

industrial scenario still faces serious setbacks in terms of implementing the disciplinary proceedings.

In view of the above, it is high time to revisit and introspect about the approach of the organizations in implementing the disciplinary proceedings in a constructive manner and some of the key suggestions are as under:

- The management of any organization must exhibit their intention in such a way that all the employees in the organization must perceive that the objective of implementing the disciplinary proceedings in the organization is to maintain the discipline in the organization. To make it very specific, the management shall not exercise the disciplinary proceedings to victimize the employees who are very active in the trade union activities or to dilute the bargaining capability of the trade union during the course of negotiation over the claim of wage or bonus and other service conditions.
- The HR professionals normally will not own the disciplinary proceedings as one of their job. It is always assumed that the process of disciplinary proceedings is more of legal nature and HR professionals feel that it is not their domain. At this juncture, more awareness to be created to the HR professional that how much the process of disciplinary proceedings is critical for conducive industrial relations.
- Every HR professional should realize that the process of disciplinary proceedings is one of the critical training needs for them and hence they are mandatorily to get imparted training to bridge the said competency gap.
- HR professional should play a very key role in implementing disciplinary proceedings in a systematic, reasonable and neutral manner. To make this happen, they should be conversant with the provisions of the Certified Standing Orders or Model Standing Orders of the organization with regard to disciplinary proceedings.
- Any ambiguity in implementing the disciplinary proceedings to be eliminated with great care by having the guidelines prescribed by the High Courts and Supreme Court on various labour matters.
- The implementation of disciplinary proceedings shall not be exercised in a very mechanical way. Rather lot of human touch to be embedded into the system to ensure that the delinquent workman exhausts all the reasonable opportunities available for him to defend his case. Moreover, it is important to take great care while imposing the punishment because the philosophy behind the imposing the punishment to reform and refine a person rather victimizing or depriving his livelihood.

In the light of the above context, to improve and sustain the morale of the employees in the organization, to maintain good industrial relations and industrial peace, it is imperative on the part of every HR professional to deal each and every disciplinary matter in a very systematic, reasonable and neutral manner. It is needless to say that the golden rules of principles of Natural Justice cannot be neglected under any circumstances. Thus, a fair and reasonable approach in disciplinary proceedings will ensure conducive industrial relations which will enhance the productivity of the employees and pave way for successful growth of the organization.

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