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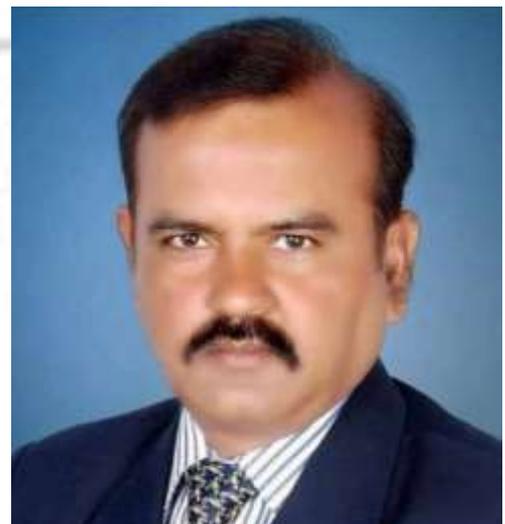
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **PRINCIPLES OF NATURAL JUSTICE IN DOMESTIC ENQUIRY**

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## **ABSTRACT**

Discipline is the foundation of any well-organized establishment, and management must take prudent measures to maintain it. However, the authority to supervise this discipline should not be used to arbitrarily dismiss or punish a worker, as this would be extremely unfair to them. Every establishment is required to maintain Model Standing Orders or Standard Standing Orders that outline the industry's bylaws, including those dealing with misconduct and discipline. These domestic investigations, if carried out in accordance with the proper guidelines, will create a fair environment and allow the worker to explain himself and defend himself from arbitrary punishment if he is innocent. Furthermore, the law mandates that such disciplinary proceedings are critical for a worker whose livelihood and dignity are at stake, because the majority of workers are illiterate and are unaware of their rights and legal protection. As a result, employers are expected to conduct these investigations in accordance with the principles of "natural justice."

### **Keywords:**

Worker, Standing Orders, Dismissal, punishment, Domestic Enquires, Misconduct and Principle of natural justice.

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## INTRODUCTION

Domestic investigations must be conducted in accordance with natural justice principles. The investigation is not open to challenge if the principles of natural justice are followed correctly and the decision is made in good faith (**T.R.Verma vs. Union of India**)<sup>3</sup>. The term "natural justice" is derived from the Roman word "Jus Naturale," which means "natural law principles, justice, equity, and good conscience." The term "Natural Justice" is frequently and widely used in the legal context. Although the adjective "natural" qualifies the noun "justice," the concept has nothing to do with natural laws and, in fact, contradicts them.

The act itself contains the principles. Certain procedural prescriptions in the Civil Procedure Code mention various rights of the parties in dispute, such as the right to reply, the right to cross-examine witnesses, inspection of evidences and documents submitted by the respective parties, and so on, which are all basic rights, and any judgement reached by violating these rights would broadly fall under the purview of natural justice and may be overturned by the appropriate judicial authorities.

According to the Supreme Court of India (**State of Punjab vs. K.R.Erry**)<sup>4</sup>, where a body or authority is characteristically administrative, the principles of Natural Justice are also liable to be invoked if the decision of that body or authority affects individual rights or interests, and it would be unfair for the body or authority not to have followed a reasonable opportunity to be heard in the particular situation. Any decision that violates the principles may be overturned by superior judicial authorities. These principles enjoin the right to be heard impartially, the right to receive notice of the offence, and the right to respond to the charge. These are procedural safeguards to ensure that justice is served fairly.

(**C LTripathi vs. State Bank of India**)<sup>5</sup> would be relevant only where there is actual prejudice. Natural justice principles are not statutory rules. They are adaptable and can be modified and implemented through statutes and statutory rules. The rules of natural justice require that a person or body performing judicial or quasi-judicial functions act in good faith, listen fairly to both sides, and give the parties litigating a fair opportunity to present their cases.

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<sup>3</sup> 1975 AIR 1882, 1958 SCR 499.

<sup>4</sup> 1973 AIR 1834, 1973 SCR (2) 405.

<sup>5</sup> 1984 AIR 273, 1984 SCR (1) 184.

## SCOPE AND OBJECTIVES OF PRINCIPLES OF NATURAL JUSTICE

Natural justice principles are the rules established by courts to protect an individual's right against the use of arbitrary procedure in determining questions affecting his rights by a judicial or quasi-judicial authority (**Pitchaiah vs. Andhra University**)<sup>6</sup>. The principles of natural justice are simple to state, but their precise scope is far more difficult to define. One thing is the rule against bias. Another is the right to be heard. These two rules are typical of what is commonly referred to as "natural justice.". They are two pillars that support it. They have been summed up in two words: impartiality and fairness. The principles of natural justice are thought to be more important in ensuring justice for the worker whose conduct is being investigated. As a result, it is critical to comprehend its scope, extent, and implications for the purposes of domestic investigation. Every day, we come across new cases, but the basic structure of the machinery entrusted with the task of conducting departmental inquiries and making decisions remains the same. As a result, the employer should pay close attention to this aspect of the disciplinary action in order to avoid pitfalls on this score.

In **A.K.Kraipak vs. Union of India**<sup>7</sup>, the Supreme Court established the following guidelines for the scope and object of Natural Justice principles.

- 1) These rules apply in areas not covered by any validly enacted law. In other words, they supplement rather than replace the law.
- 2) The purpose of these rules is to ensure justice, or to put it another way, to prevent miscarriages of justice.
- 3) Because of their nature, they cannot be cast in a narrow mould or fitted into a straight jacket, as this would deprive them of their flexibility or adaptability to the countless situations that may arise during the course of the investigation.
- 4) Whether a particular Natural Justice principle applies to a specific situation is determined by the facts and circumstances of each case.
- 5) When a complaint is made to the court that a Natural Justice principle has been violated, the court must decide whether the rule's observance was required for a just decision of the case.

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<sup>6</sup> AIR 1961 AP 465.

<sup>7</sup> AIR 1970 SC 344.

## TWO PRINCIPLES OF NATURAL JUSTICE

1. No one should be made a judge in his or her own case, or the rule against bias.
2. Audi alteram partem - Hear the other party, also known as the rule of fair hearing, or the rule that no one should be condemned without being heard.

### 3.1 First Principle of Natural Justice: Nemo debet esse judex in propria causa

According to the maxim, no one can be a judge in his or her own cause. In departmental proceedings, the fundamental rule of natural justice is that the disciplinary authority be impartial and free of bias. It must not be interested in or related to the cause that he is deciding on. Personal interest can take the form of a monetary benefit, a personal relationship, or even ill-will, malice, or any official bias against one of the parties. The true litmus test is whether a man of ordinary prudence would suspect bias. This stems from the principle that justice should not only be done, but also appear to be done. In a significant case (**Mukhtar Singh vs. State**), it was held that the hearing must be conducted by an impartial tribunal, i.e. by someone who is not directly or indirectly involved in the case. The court went on to say that it didn't matter whether it was done in good faith or whether the truth was that way because the sight of a Judge hopping on and off the Bench to act first as judge, then as witness, then as judge again to decide whether he should believe himself over another witness is startling to say the least. It would undoubtedly delight a Gillbert and Sullivan Comic Opera audience, but it will do little to inspire public confidence in the fairness and impartiality of departmental trials, and certainly not in the respondent's mind. "Departmental trials were instituted even before the constitution to instil a sense of security in the services and inspire public confidence in the treatment accorded to Government servants" (**State of Uttar Pradesh vs. Mohammed Nooh**)<sup>8</sup>.

In another case (**S.Parthasarathi vs. State of Andhra Pradesh**)<sup>9</sup>, the appellant worked as an Office Superintendent in the Information and Public Relations Department, and the inquiry against him was conducted by the Deputy Director, Sri Manvi, who was directly in charge of him. The charges were found to be proven, and the appellant was forced to retire. He filed a lawsuit against the order, and the trial court declared it null and void and awarded him damages. The High Court, however, overturned this order on appeal by the State Government, and the

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<sup>8</sup> 1958 AIR 86, 1958 SCR 595.

<sup>9</sup> 1973 AIR 2701, 1974 SCR (1) 697.

appellant then petitioned the Supreme Court to vacate the High Court's decision, claiming that the Inquiry Officer was biased against him.

In another case (**Arjun Chowbey vs. Union of India**)<sup>10</sup>, the accused was a Senior Clerk in the Office of the Chief Commercial Superintendent, Northern Railway, Varanasi. On May 22, 1982, the Senior Commercial Officer wrote him a letter demanding an explanation for 12 charges of gross indiscipline. On June 9, 1982, the appellant submitted his explanation. The Deputy Chief Commercial Superintendent served a second notice the next day, stating that the explanation was insufficient and that he should explain why deterrent disciplinary action should not be taken against him. On June 14, 1982, the appellant provided another explanation, and the following day, the Deputy Chief Commercial Superintendent issued an order dismissing him from service on the grounds that he was unfit to be retained in service.

In **S.Pratap Singh vs. State of Punjab**<sup>11</sup>, the appellant, a Civil Surgeon with the Punjab Government, was recalled from leave to prepare for retirement, suspended, and a departmental inquiry was launched. He claimed that the orders were null and void because they were issued at the request of the Chief Minister, who was hostile to him. The Supreme Court observed that the functionary who took action and on whose instructions the action was taken against the Civil Surgeon under the Punjab Government was undoubtedly the Chief Minister, and that if that functionary was motivated by malafide in taking that action, such action would be void. In the circumstances, the dominant motive that prompted the Government to take action against the appellant was not to initiate disciplinary proceedings against him for misconduct that it genuinely believed he had committed, but to exact vengeance on him for incurring the chief minister's wrath. The Court held that the impugned orders were vitiated by malafide in that they were motivated by an improper purpose that was outside of the scope of the power of discretion conferred on the Government, and the orders were thus set aside.

- After discussing the case law on the subject, the Andhra Pradesh High Court in **M.Koteswara Rao Vs. Sr.Manager**<sup>12</sup> laid down the following principles in regard to bias -
- Every judge, authority, arbitrator, or body or person with the authority to decide disputed questions of law and facts must act fairly.

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<sup>10</sup> 1984 AIR 1356, 1984 SCR (3) 302

<sup>11</sup> 1964 AIR 72, 1964 SCR (4) 733.

<sup>12</sup> 1977 (3) ALD 491, 1997 (3) 68, (1977) ILLJ 489 AP.

- He is disqualified if he has a financial or other interest in the proceedings or acts in a biased manner that creates a real likelihood of bias.
- The bias does not have to be established as a fact. It is sufficient if there was a genuine possibility of bias or a genuine suspicion of bias, or if there was a substantial possibility of bias.
- The measuring rod of actual bias or real likelihood of bias is that a reasonable and fair-minded person adequately apprised of all relevant facts might reasonably and legitimately believe that there was a real likelihood of bias, and that bias cannot be inferred on the basis of speculative suspicions of whimsical, capricious, and unreasonable people.

### **3.2 Second principle of natural justice is ‘audi alteram partem’ which means that no one should be condemned unheard**

According to the maxim, the employee who has been charged should have a reasonable opportunity to be heard in the matter. According to the Supreme Court of India (**Khem Chand Vs. Union of India**), "reasonable opportunity" is defined as:

- (a) the opportunity to deny his guilt and establish his innocence, which he can only do if he is informed of the charges levelled against him and the allegations upon which such charges are based.
- (b) an opportunity to defend himself by cross-examining the witness brought against him as well as by cross-examining himself or any other witnesses to support his defence; and finally,
- (c) an opportunity to make his case for why the proposed punishment should be imposed on him, which he can only do if the competent authority, after the investigation is completed and after considering the gravity or otherwise of the charges proved against the charge sheeted employee, tentatively proposes to impose and communicates the same to the concerned employee.

According to Rao (1980), an enquiry cannot be said to have been properly held unless the employee has been informed of the charges against him, witnesses have been examined in his presence, the employee has been given an opportunity to cross examine the witness, he has been given an opportunity to examine witnesses including himself in the defence, and the enquiry has been properly conducted.

According to Bhide (1978), if the following rules and relevant procedures of the standing order are followed, the investigation cannot normally be challenged on the grounds that the procedure was not strictly followed or that there were some procedural lapses. They are that, no one should be condemned behind his back, and the employee charged should be aware of the allegations against him (the charge sheet should be clear, specific and give necessary details of acts which constitute misconduct), The Supreme Court (**Sur Enamel and Stamping Works vs. their Workmen**) has stated that no investigation is said to have been properly conducted unless and until;

- (1) The employee being prosecuted has been fully informed of the charges levelled against him. (2) In relation to the charges, the witnesses are cross-examined in the employee's presence.
- (2) The employee is afforded a reasonable opportunity to cross-examine the employer's witnesses.
- (3) He is given a fair chance to present his case by questioning defence witnesses, including himself if he so desires.
- (4) The enquiry officer writes a report detailing his findings and reasoning.
- (5) That the hearing be conducted by an impartial tribunal; the enquiry officer must not be a direct or indirect party to the case, have an interest in the litigation, or be biased against the parties involved.

### **List of witnesses and documents should be provided**

One of the important requirements of Natural Justice principles in a departmental investigation is that a list of witnesses and a list of documents in support of the charges be provided to the charged employee. The rules provide for the provision of copies of earlier statements of witnesses to the charged official upon his request, as well as the right to inspect the documents cited in the list. The Supreme Court considered whether the charged employee was entitled to a copy of the Special Police Establishment report (**Chandrama Tewari Vs. Union of India**)<sup>13</sup>, and in that context, the following guidelines on the supply of copies of documents were issued:

- (1) A copy of the documents relied on against the party charged, if any, should be provided to him, and he should be given the opportunity to cross-examine the witnesses and present his own witnesses in his defence. If findings are recorded based on a document that was not disclosed to him or a copy of which was not provided to him during the

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<sup>13</sup> 1988 AIR 117, 1988 SCR (1) 1102

investigation when requested, this would violate Natural Justice principles, rendering the investigation and the subsequent order of punishment illegal and void.

- (2) It is not necessary to provide each and every document to the delinquent Government Servant facing charges. Instead, only material and relevant documents must be provided to him. If a document, even if mentioned in the charges memo, is not relevant to the charges, or if it is not referred to or relied on by the inquiry officer or the punishing authority in holding the charges proved against the charge sheeted employee, no exception can be taken to the proceedings or the order's validity. The Supreme Court held in the case of **Syndicate Bank vs. Venkatesh Gururao Kurati** that non-supply of documents on which the enquiry officer does not rely during the course of the investigation

### **MEANING OF DOMESTIC ENQUIRY**

The term "domestic enquiry" refers to an investigation into allegations of indiscipline and misconduct by an employee. Domestic enquiry is slang for departmental inquiry or domestic tribunal. In such cases, the matter is handled by disciplinary authorities or administrative officers rather than a court of law.

It is common for disciplinary authorities in a department or industry to appoint an officer or officers to investigate an allegation against an employee. These are commonly referred to as Domestic Enquiries.

### **DEFINITION OF DOMESTIC ENQUIRY**

Based on the above definition of domestic enquiry, we understand that it refers to an investigation into allegations of indiscipline and misconduct by an employee. Domestic enquiry is slang for departmental inquiry or domestic tribunal. Administrative officers, not courts of law, make decisions in such inquiries. In cases of alleged indiscipline, disciplinary authorities in a department or industry will typically appoint an officer or officers to investigate the allegations against an employee. These are commonly referred to as 'Domestic Enquiries.'

### **CONCEPT OF DOMESTIC ENQUIRY**

Domestic enquiry is similar to a trial in a court of law, but unlike a trial in a court, domestic enquiry is conducted for offences committed against the establishment for misconduct,

punishable under the organization's standing orders/rules and regulations. Furthermore, the enquiry officer is not authorised to penalise the employee while examining the evidence and deciding on guilt. Only the employer or the appointing authority, also known as the notified disciplinary authority, has the authority to impose a penalty. Domestic investigation is not a legal requirement under the Industrial Disputes Act or other substantive laws such as the Factories Act, Mines Act, and so on, but it is provided for in the Industrial Employment (Standing Order Act) 1946. As a result, it is now well established that such standing orders have legal force and constitute statutory employment terms.

## LEGAL REQUIREMENT OF DOMESTIC ENQUIRY

Domestic investigation has been provided for in the Industrial Employment (Standing Order Act) of 1946, as part of the standing orders. As a result, it is now well-established that such standing orders have the force of law and constitute statutory terms of employment.

## PROCEDURE FOR A DOMESTIC ENQUIRY

1. Complaint
2. Preliminary enquiry
3. Filing charge sheet
4. Appointment enquiry officer
5. Suspension pending enquiry
6. Notice of enquiry
7. Employees hearing
8. Examination of witnesses
9. Report of enquiry

## PRELIMINARY ENQUIRY

The Hon'ble High Court of Calcutta observed in the landmark case of **Amulya Ratan Mukharjee vs. Eastern Railway**<sup>14</sup> that:

- "When the authorities receive a complaint from an employer, they have the right to conduct a preliminary investigation or a "Fact-Finding inquiry" before charging. This

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<sup>14</sup> (1962) IJ- 11 "540, Cal " H.C.,

is not considered a formal investigation, and no rules are followed in such an investigation.

- There may be an ex-parte examination or investigation, as well as an ex-parte report. All of this is done so that the authority can be informed of the true facts and decide whether or not to charge the employee.
- However, the departmental investigation begins with the charge sheet. The charge sheet must be specific and contain all of the necessary details. There is no reason to assume that the delinquent who was aware of previous proceedings knew everything about the charge sheet (**Fire Stone Tyres Vs. their Workmen**)<sup>15</sup>

### **PURPOSES OF PRELIMINARY ENQUIRY**

Allegations against people are sometimes made in a frivolous, reckless, and prejudiced manner. A preliminary investigation may shed light on the allegations and assist the authorities in determining whether there is a prima facie case and sufficient grounds to charge the individual. It would be wrong to pre-determine the person's guilt in a preliminary investigation, no matter how strong the evidence gathered during the preliminary investigation. Such evidence could only help the authorities frame charges against those who have been accused. Preliminary inquiries are conducted orally as much as possible, and only the person conducting the inquiry records it in writing.

### **ENQUIRY PROCEEDINGS**

Before beginning an investigation, management should ensure that a specific misconduct exists and that the facts of the misconduct are clear. Attempting disciplinary action with harsh punishment on flimsy grounds and untrustworthy witnesses is risky. If it is unsure of the facts of the case based on the evidence available, it is better to be lenient and let the worker off with a warning. If the employee's explanation is not satisfactory and management is confident in its case, a letter must be sent to the delinquent stating that it has been decided to hold an investigation into the charges on a specific date, time, and place. The following may be included in the same letter.

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<sup>15</sup> 1967 II ILJ 715 SC

## CHARGE SHEET

A charge-sheet essentially contains detailed particulars of the misconduct, specific charges against the worker, and the relevant Standing Order clauses under which the worker is punishable.

In **Sur Enamel and Stamping Works (P) Ltd. vs. Their Workmen**<sup>16</sup>, the Hon'ble Supreme Court, in an attempt to lay down the procedure for conducting an enquiry for industrial adjudication, stated that an enquiry cannot be said to have been properly held unless and until the following conditions are met:the workman proceeded against must be informed clearly of the charges levelled against him;

1. Witnesses must be questioned in the presence of the worker.
2. The worker must be given a fair chance to cross-examine witnesses, including himself, if he so desires; and
3. The Enquiry Officer must include his findings and justifications in his report.

In general, standing orders specify how to serve the charge sheet on the worker in question, and the procedure should always be followed. It can be given to the delinquent employee in person or by mail.He simply tells the accused what he is accused of doing (**Bennet Coleman & Co**)<sup>17</sup>.

In **Powari Tea Estate Vs. M.K. Barktaki**<sup>18</sup>, the Supreme Court held that the charge must not contain any expression that would give rise to reasonable apprehension in the mind of the worker against whom the inquiry is held that the management has already made up its mind as to his guilt. As a result, it must only state the alleged misconduct for which an investigation is required.

## APPOINTMENT OF ENQUIRY OFFICER

**Saran Motors Pvt. Ltd. Ltd., New Delhi vs. Vishwanathan**<sup>19</sup>, it was determined:

- "The Enquiry Officer should be properly and duly authorised by the competent authority to conduct a domestic investigation into the allegations made against an

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<sup>16</sup> 1963 SC 1914

<sup>17</sup> LAC p.2 956

<sup>18</sup> 1965 II LLJ 102

<sup>19</sup> 1964 11 LLJ 139

employee." Any person, including an outsider, may be appointed as an enquiry officer if the rules or Standing Orders do not prohibit it.

- The Enquiry Officer is required to explain the investigation and chargesheet procedures to the concerned worker."

## **FUNCTIONS OF ENQUIRY OFFICER**

An Enquiry Officer should complete the investigation and report his findings to the Disciplinary Authority as soon as possible. To that end, he should do the following:

- a) Inform the employee of the date of the first hearing. He may also advise on the list of documents and witnesses to be used by the prosecution and forward copies of documents received from the Presenting Officer.
- b) The following individuals are permitted to participate in an investigation proceeding:
  - i. Employee who is delinquent
  - ii. Officer of Presentation
  - iii. If applicable, the Defense Representative
  - iv. Only one witness is being examined at a time.
- c) Ensure that the employee is present at all inquiry sessions. The investigation should not be carried out without his presence.
- d) During the investigation, confirm the employee's identity and obtain basic information about him, such as his name, age, and so on.
- e) Inquire with the employee if he received the charge sheet, quoting the charge sheet number and date.

## **NOTICE OF ENQUIRY**

When the employee receives the charge sheet, he sends his response to the Authority. If the Authority finds the response unsatisfactory, he may be issued a show cause notice. This procedure was used in the case of **Associated Cement Co. Ltd vs. Their Employees and Others**<sup>20</sup>, which states:

"The worker should be given adequate notice of the date of the investigation so that he can prepare his defence at the investigation."

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<sup>20</sup> 1964 65 26 FJR 289 SC

## SUPPLY OF RELEVANT MATERIALS

Any document in proof of charge may be requested by management. So, in accordance with natural justice principles, such copies of those documents should be provided to the delinquent worker. As enumerated in the case of **Meenglass Tea Estate vs. workmen**<sup>21</sup>, a workman who is to answer to a charge must not only know the accusation but also the testimony by which the accusation is supported.

## EXAMINATION OF WITNESSES

There is no legal provision that allows Enquiring Officers conducting domestic investigations to compel the attendance of witnesses, as in the Codes of Civil Procedure or Criminal Procedure. Furthermore, some general rules for witness examination are mentioned in the **Tata Engineering and Locomotive Co. judgement. S.C. vs. Ltd. Prasad**<sup>22</sup>.

The Supreme Court of India observed:

- "If the allegations mentioned in the charge sheet are denied by the worker in the domestic enquiry proceedings, the onus of proving those allegations will be on the management and;
- the witnesses summoned by Management must be allowed to be cross-examined by the employee; and
- the worker must also be given a reasonable opportunity to examine himself and present any additional evidence in support of his plea."

## REPORT OF ENQUIRY OFFICER

### CONSIDERATION OF THE PAST RECORD

When deciding on a punishment, the Disciplinary Authority should consider the employee's previous record. When it is in the employee's favour and the misconduct committed by and approved against him is minor, the Disciplinary Authority may be lenient. In the event of a negative past record, it should be disclosed to him (employee) in the show cause notice and he should be given the opportunity to explain it.

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<sup>21</sup> 1963 11, L.J, 392 (S.C)

<sup>22</sup> (1969) 11 L.L.J 799 (S.C)

## **APPEAL**

An employee can appeal to the Appellate Authority against the decision of the Disciplinary Authority. But it should be done within a specified time limit from the date of communication of the final order of punishment by the Disciplinary Authority. The Appellate Authority should also give a personal hearing to the employee if so required by him in case of dismissal. He may also be permitted to be represented by a Defence Representative. At the stage of appeal, the punishment awarded by the Disciplinary Authority can only be retained or reduced but not enhanced by the Appellate Authority. The appellate authority should dispose of the appeal within a stipulated time.

## **CONCLUSION**

Any act or omission of an employee, whether amounts to the misconduct or not, is to be governed in accordance with the provided list in the Industrial Establishments (Standing Order) Rules. Although no statute or law specifically lays down the procedure to conduct the disciplinary enquiry, the various judgements of the Industrial Tribunals, however, have laid down a basic idea of the procedure that ought to be followed while conducting such an enquiry. The prime principle that is to be taken care throughout the procedure of the enquiry is the principles of the natural justice that shall be ensured at every step and action to assure the delivery of justice.

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