**DISCIPLINARY ACTION PROCEDURE**

**01. Prologue**

In the interest of maintaining good order and discipline in his establishment en employer has in inherent right to suitably punish a delinquent employee. However, with the emergence of modern concepts of social justice, this inherent right has come to be concepts of social justice; this inherent right has come to be subjected to certain restrictions so as to protect an employee against any sort of vindictive or capricious action. The employer is, therefore, required to follow certain principles and procedures before he can award any punishment to his employee. It is very essential that the correct procedure is followed by the employer to ensure that his punishment order is not upset, later on by any Industrial Tribunal on technical grounds, should it be made the subject matter of an industrial dispute. Except to a certain extent in the Industrial Employment (Standing Orders) Act, 1946, there is little or no specific provision in any statue relating to industrial law in this country prescribing in detail the correct procedure as such, which should be followed before awarding punishment to an employee. However, in recent years there has been a gradual emergence of a body of principles resulting from the decisions of the various Industrial Tribunals, as well as High Courts and the Supreme Courts indicating the basic formalities to be observed and the correct procedure to be followed by the employer in such cases. These principles are fairly well established by now and an attempt has been made in this handbook to explain these principles and their practical application in detail as far as possible.

**02. What Constitutes Misconduct?**

In every general term, an act or conduct of an employee, which is

a) Prejudicial or likely to be prejudicial to the interest of the employer as also that of the other employees;

b) Inconsistent or incompatible with the normal norms of discharge of his duty;

c) Such that it makes it unsafe and undesirable for the employer to retain him in service;

d) Such that the employer cannot rely on his faithfulness; or

e) Such that it amounts to insubordination to such a degree as to be incompatible with the employer – employee relationship;

may be termed as misconduct. This description is illustrative only and not exhaustive. However it gives a fairly good idea of the concept of misconduct.

**02. Something about Industrial Employment (Standing Orders) Act, 1946**

This Act was passed by the parliament in 1946. The object of this enactment is to define, in precise terms, the conditions of employment for the employees. This Act is applicable to “Industrial Establishment” employing one hundred or more employees. The States have powers to make this Act applicable to “establishments” employing even lesser number of employees. It is, therefore, advisable to ascertain from the offices of the respective State Labour Commissioners, whether this Act, on a given date, becomes, applicable to a given establishment or not. The “Industrial Establishments” to which this Act applies can have their Standing Orders certified. The certification is done by the State Labour Commissioner or an Officer under him known as a certifying Officer. These Standing Orders are required to be in conformity with the Model Standing Orders framed by the respective State Governments. The Standing Orders inter-alia defines acts and omissions, which constitute misconducts, as also indicate generally a procedure for proceeding against an employee involved in misconduct. Till such time as the Standing Orders for any establishment covered by the Act are certified, it remains governed by the Model Standing Orders framed by the respective State Governments. These Model Standing Orders are specified in Industrial Employment (Standing Orders) Rules, framed by the State Governments.

03.1 The Model Standing Orders framed under the Bombay Industrial Employment (Standing Orders) Rules, 1959, specify the following acts and omissions as misconducts for which the delinquent employee can be punished:

a) Willful insubordination or disobedience, whether or not a combination with another, of any lawful and reasonable order of a superior;

b) Going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

c) Willful slowing down in performance of work, or abetment or instigation thereof;

d) Theft, fraud or dishonesty in connection with the employer’s business or property or the theft of property of another workman within the premises of the establishment.;

e) Taking or giving bribes or any illegal gratification;

f) Habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;

g) Late attendance on not less that four occasions within a month;

h) Habitual breach of any Standing Order or any law applicable to the establishment of any rules made there under;

i) Collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the time being in force;

j) Engaging in trade within the premises of the establishment;

k) Drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment;

l) Commission of any act subversive of discipline or good behaviour on the premises of the establishment;

m) Habitual neglect of work, or gross or habitual negligence;

n) Habitual breach of any rules or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment;

o) Habitual commission of any imposed under the Payment of Wages Act, 1936;

p) Canvassing for union membership or the collection of union dues within the premises of the establishment, except in accordance with any law or with the permission of the Manager;

q) Willful damage to work in process or to any property of the establishment;

r) Holding meetings inside the premises of the establishment without the previous permission of the manager or except in accordance with the provisions of any law for the time being in force;

s) Disclosing to any unauthorized person any information in regard to the process of the establishment which may come into the possession of the workman in the course of his work;

t) Gambling within the premises of the establishment;

u) Smoking within the premises of the establishment where it is prohibited by the employer;

v) Failure to observe safety instruction notified by the employer or interference with any safety device or equipment installed within the establishment;

w) Distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters and such other things or causing to the displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager;

x) Refusal to accept a charge-sheet or other communication served in accordance with these Standing Orders;

y) Unauthorized possession of any lethal weapon in the establishment.

Explanation: - No act of misconduct, which is committed on less than three occasions within a space of one year, shall be treated as habitual.

This list may vary from State to State.

**03.2**The above list precisely indicates which acts and omissions on the part of an employee can be termed as misconduct. If any act or omission does not fall in any of the above, it will not be possible for an employer to treat it as misconduct and proceed against the employee.

**03.3**It may so happen that the Certified Standing Orders for a given establishment may contain some additional items which can be called misconduct as are not enlisted in the Model Standing Orders, and in such a case alone, action for such acts of misconduct will be possible. The employer is, therefore, required to first ascertain whether any particular act or omission on the part of the

03.4 Normally establishments which are not covered by the Standing Orders Act, frame rules known as Service Rules, which have the same force as Standing Orders and such rules also prescribe the acts and omissions, which can be treated as misconduct.

employee falls in the list mentioned in the Model Standing Orders or the Certified Standing Orders, as the case may be, and then alone invoke the disciplinary procedure. It is needless to say that no disciplinary action can be taken for any act or omission, which is not misconduct.

03.5 In cases where neither the Act is applicable nor any Service Rules have been framed, the Model Standing Orders can be taken as a guide for disciplinary actions so as to fulfill the principles of natural justice.

**04. Principles of Natural Justice**

a) An opportunity must be given to the delinquent employee to refute the charges and to establish his innocence; this can be done only when he is told in unambiguous terms what is the charge levelled against him.

b) An opportunity to conduct his defence must be available to him by cross-examining witnesses in support of the charge levelled against him and by allowing him to examine witnesses in his own defence.

c) The enquiry against the delinquent employee should be fair and should be conducted by an impartial person.

d) The evidence at the enquiry should be adduced in the presence of the employee charged.

e) Punishment awarded should not be out or proportion to the misconduct committed.

As indicated earlier, the Supreme Court in its various pronouncements has enunciated certain principles to be followed while proceeding against a delinquent employee. These principles known as “Principles of Natural Justice”, can be summarized as follows;

**05. Procedure for Disciplinary Action**

It would thus be seen that it is an elementary principle of natural justice that no man should be condemned or punished without being given an opportunity to explain the circumstances obtaining against him. Based on this elementary principle of natural justice, Industrial Tribunals in which India by their various awards have come to indicate an elaborate procedure involves the following important steps:

**Steps**

1. Issue of a letter of charge to the employee calling upon him to submit his explanation.

2. Consideration of explanation.

3. Giving a notice of an Enquiry into the charges, if the explanation is not found satisfactory.

4. Holding of a full-fledged Enquiry giving all facilities to the employee for being heard.

5. Recording of the findings by the Enquiry Officer.

6. Consideration of the enquiry proceedings and the findings by the authorities empowered to take a decision and make the final order of punishment.

7. Informing the employee of the punishment decided to be awarded to him.

Note: The Procedure indicated above is mainly for major misconducts, such as willful insubordination, disobedience, theft, fraud, dishonesty, willful damage to employer’s property, taking or giving illegal gratification, riotous or disorderly behaviour during working hours, habitual negligence of work, striking work or inciting other to strike in contravention of the provisions of law etc. For minor misconducts, for instance, unpunctuality, late attendance, minor acts subversive of discipline, absence without permission, (Provided it is not habitual), etc, the entire procedure listed above need not be followed. In such cases, it will be sufficient to issue a show cause notice to the worker concerned, as for his explanation and if the explanation is found unsatisfactory he may be issued a warning note straightaway. (Draft show cause notice and draft warning notes are marked as annexure ‘A’ and ‘B’ respectively.)

**05.1 First step – Issuing of the Letter of Charge**

As soon as the Management comes to the conclusion, on the basis of the report received and the necessary preliminary investigation made, that an act of misconduct committed by an employee, in the circumstances of the case, warrants disciplinary action, the employee concerned should without any delay be issued a charge sheet clearly and precisely setting forth particulars of misconduct committed by him, and calling upon him to submit his explanation in writing within a reasonable period of time. (A draft charge-sheet is marked as Annexure ‘C’)

Note: No had and fast rule can be laid down for providing time for submitting explanation. The only consideration should be that in the circumstances of the case the time given to the employee should be sufficient to enable him to prepare and submit his explanation. Usually, for minor misconducts 24 hours and for major misconducts 48 hours time may be allowed. Extension of time for genuine reasons, if specifically requested for, should be granted in the normal course.

**Important**

It is essential that the charges made in the charge-sheet should not be vogue. The charges should be specific and clearly state that nature of misconduct, the date on which the misconduct was committed and the time of its commission, place and other relevant details. Great care should be taken in framing the charge-sheet for, on the proper framing of the charge-sheet the validity or otherwise of a subsequent enquiry proceeding and dismissal or any other punishment may entirely depend.

**05.2 Refusal to Accept the Charge-sheet**

If an employee refuses to accept the charge-sheet or to acknowledge its receipt it should be sent to him by Registered Post, A.D.- at his last known address or alternatively the act of refusal to accept should be recorded in the presence of at least known address or alternatively the act of refusal to accept should be recorded in the presence of at least two witness. This procedure is essential to be adopted so that the employer may not at a later stage deny the service of the charge-sheet. A copy of the charge-sheet may also be displayed on the Notice Board inside the establishment premises, with notings as to when displayed and when removed, etc., before filing with appropriate papers. In appropriate cases, publishing the charge-sheet in newspapers can also be adopted.

**05.3 Misconduct, which is also Subject Matter of Criminal Proceedings**

There may be cases where the misconduct which besides being subject of a domestic enquiry is also the subject of criminal proceedings in Court of Law. For such cases the principles of natural justice do not require that the employer must await the decision of the Criminal Court before taking disciplinary action against the employee though there may be peculiar cases where it would be advisable for the employer to await the decision of the trying court. Thus a pending criminal case is no bar for holding domestic enquiry. However, in general, if an employer proceeds with an enquiry in spite of the fact that a criminal

case is pending, the domestic enquiry for that reason would not be vitiated. Similarly, acquittal in criminal case does not affect the validity of the punishment awarded after a domestic enquiry by the employer.

**05.4 Suspension Pending Enquiry**

If in the preliminary investigation it is established that the nature of misconduct committed by the employee concerned is such that his physical presence inside the establishment premises might endanger the safety of any individual or a group or aggravate the misconduct already committed or if it is apprehended that the employee might tamper with the evidence or intimidate the witnesses, the employer may suspend a worker pending the full-fledged enquiry. During such suspension, the workman is entitled to suspension wages or subsistence allowance as laid down in the Standing Orders or Service Rules, if applicable. If there is no specific provision for such payment during suspension period, it must be noted that the worker is entitled to full wages even if he is under suspension. Similarly, payment of wages due for the period suspension is required to be made even if the worker is ultimately dismissed after the enquiry. On the other hand if the employee is found not guilty of the charges he becomes entitled to full wages for such suspension period, as if he was not guilty. Suspension wages are “wages” within the meaning of the Payment of Wages Act and should be paid on due dates. It must be noted that suspension pending enquiry is not a punishment. Punishment follows only after the enquiry.

**06. Second Step – Consideration of the Explanation**

The employee in reply to the charge-sheet may:

a) Submit his explanation admitting the charge and ask for leniency;

b) Submit his explanation refuting the charge;

c) Apply for an extension of time for submitting the explanation;

d) Fail to submit his explanation.

**06.1 When the employee Admits the Charge(s)**

**06.2 When the Employee Submits his Explanation Refuting the Charge (s)**

It may sometimes happen that the employee might admit the charge (s) levelled against him, asking for leniency. Even if admission of the charge (s) by the employee is unqualified and unambiguous, it may not be advisable for the employer to straightaway proceed to award punishment to the employee without holding an enquiry for the simple reason that the employee may later on disown his earlier4 confession and allege that it was obtained by the employer under coercion or duress and that it was not voluntary confession. In such case, an enquiry should be fixed as any other enquiry, the only difference being that it will not be necessary for the Enquiry Officer to record evidence to bring home the charge, but he can give his findings on the basis of admission made by the employee in his presence which he must record and obtain the signature of the employee on it instead of relying on the letter of such admission produced by the Management.

When an employee submits his explanation refuting the charge(s), it is to be carefully considered whether or not the explanation offered is satisfactory. If it is found satisfactory, further proceedings

**06.3 When the Employee Asks for an Extension of Time**

**06.4 If the Employee Concerned Fails to Submit His Explanation 08.1.1 Procedure for Holding an Enquiry**

in the matter should be dropped and the employee should be informed accordingly. However, if it is found that the explanation submitted is not satisfactory and it felt that punishment ( other that warning note ) would be warranted, further steps regarding the holding of an elaborate enquiry should be taken.

When the employee asks for an extension of time to submit explanation or reasonable grounds it should preferably be granted, so that any future controversy on this issue is avoided.

If the employee fails to submit his explanation, the employer may proceed to take further proceedings as indicated herein. However, in such a case also it is important to bear in mind that failure to submit an explanation by the employee would not entitle the employer to dispense with the holding of an enquiry into the charges levelled against the employee, and to proceed straightaway to award the punishment to him. The enquiry has to be held as per the procedure, if punishment is to be awarded.

**07. Third Step – Giving Notice of Holding of Enquiry**

If the explanation submitted by the employee is found unsatisfactory, the next step is to issue him a notice of holding an enquiry, giving him information as to the name of the Enquiry Officer, the date, time and venue of the enquiry as also notifying to him that he should have ready with him on the date of enquiry the witnesses that wishes to examine or any other relevant information that he may like to give. ( A draft notice of holding an enquiry is marked as Annexure ‘D’)

Note: In certain cases, it is advisable that instead of straightaway issuing a charge-sheet as such, only a show-cause notice should be issued to the employee, requiring him to submit his explanation. On the basis of the explanation submitted, it is possible to issue a specific charge-sheet to the employee, in which case the notice of holding an enquiry can also be incorporated therein. Thus, in such cases first step would be the issue of show-cause notice, the second, consideration of the explanation and the third, issue of a charge-sheet as well as notice of an enquiry.

On the other hand, in certain cases where prima-facie case is established it is possible and permissible to combine the show-cause notice, charge-sheet and intimation of holding enquiry in one and the same letter, to avoid delay in disciplinary action.

**08. Fourth Step – Holding of the Enquiry**

The object of holding an enquiry is to give an opportunity to the charge-sheeted employee to establish his innocence by explaining the circumstances alleged against him, and understanding his defence.

At the appointed time and date the following should be present at the venue of the enquiry proceedings:

i) **The Enquiry Officer:**The Enquiry Officer and the authority empowered to issue letter of charges and punishment should be different persons. The Enquiry may be held by any responsible official of the company or even by an outsider while the letter of charge and the letter awarding the punishment should be issued by the Manager. This is necessary from the point of view that the judge and the prosecutor should not be the same person. It is also essential that the Enquiry Officer does not import his knowledge of facts in the enquiry proceedings. He should, therefore, preferably be a person who is neither a witness nor a party to the incident which has resulted into the charge-sheet.

ii) **The Management Representative:**This is the person who presents the Management’s case before the Enquiry Officer by adducing all the relevant evidence, documentary and oral, in support of the charge. He has a right to cross-examine the employee as well as the defence witness with a view to establishing the charge.

iii) **The Charge-sheeted employee:**It is absolutely necessary that the enquiry should be held in the presence of the charge-sheeted employee. If, however, the employee fails to report for the enquiry at the appointed time, despite reasonable opportunity, the Enquiry Officer may proceed with the enquiry ex-parte provided the charge-sheeted employee turns up and affords sufficient cause for his failure to report for the enquiry at the appointed time, the enquiry may be proceeded with the de novo, after making appropriate note in the proceedings to this effect.

iv) **A representative of the charge-sheeted employee:**If the charge-sheeted employee wishes another employee of his choice to represent him and assist him at the enquiry in the conduct of his defence, it should be normally allowed. Normally, it is provided in the Standing Orders that an employee can be defended by another employee working in the same department as himself. However, the Enquiry Officer may allow at his discretion an employee from another department and particularly so, if he is Union official and should make a note of it in the proceedings. Often a request is made for a non-employee union official or a lawyer to be allowed to be present to assist the charge-sheeted employee. It is absolutely in the discretion of the Management to grant or refuse such a request. The law does not require admission of non-employees or lawyers in the domestic enquiry and, therefore, requests for allowing an outsider union official to be present at the enquiry to assist the charge-sheeted employee can be refused, whether or not the union is recognised. Normally, persons who are not employees of the establishment and lawyers are not allowed in domestic enquiries.

v) **An interpreter, if necessary:**The presence of an interpreter, from amongst the employees, would be desirable though not mandatory, in case the charge-sheeted

employee pleads that he is not familiar with the language in which the Enquiry Officer intends to conduct the proceedings. The enquiry should be as far as possible to be conducted in the language understood by the majority of employees.

08.2 The Enquiry Officer should begin with recording the date of holding the enquiry, the persons present on the date of holding the enquiry, the persons present at the enquiry, a statement making reference to the charges, as per the letter of charge issued to the employee, a statement to the effect that the procedure of enquiry was explained to the charge-sheeted employee, and any other relevant statement, such as, a statement relating to a request by the charge-sheeted employee to allow an outsider union official to be present at the enquiry and the Enquiry Officer’s refusal to grant such a request, whether the employee admits charges or not, etc. He should then ask the Management’s representative to present the case in detail, which should be recorded.

**08.3 Examination of Witnesses in Support of Charge(s)**

It is advisable that none other than those who are to participate in the enquiry, should be present. In particular, presence of a superior of the charge-sheeted employee should be discouraged unless he is the management representative or a witness and enters the proceedings at the appropriate time of his evidence, so that the employee later on does not allege that an attempt was made to bring pressure on him during the enquiry.

Witness in support of charge(s) should be examined one by one. A witness should not be present when another is being examined. After the witness has finished his evidence the charge-sheeted employee should be asked to cross-examine the witness, if he so desires. If the charge-sheeted employee does not wish to cross-examine the witness a statement to that effect should be recorded in the proceedings. After the first witness has finished his evidence the second witness should be called in and then the third witness and the same procedure should be repeated. At the end of his evidence the signature of the witness should be obtained. Also the signature of the charge-sheeted employee should be obtained, preferably after inserting the following remarks:

**“Read over, explained and admitted that the above, statement has been recorded in my presence”**

If the charge-sheeted employee refuses to sign, a remark to that effect should be recorded. At the end of the cross-examination also signatures and dates of both the charge-sheeted employee and the witness should be obtained. If the charge-sheeted employee refuses to sign, once again a statement to this effect should be recorded.

There is no rule regarding the order in which the witnesses in support charge(s) should be examined. However, normally, it is refused to examine the most important witness first.

**08.4 Statement of the Charge-sheeted Employee**

**08.5 Cross-examination of the Charge-sheeted Employees:**

**08.6 Examination of the Witnesses in Defence**

After the evidence of all the witness(es) in support of the charge is over, the charge-sheeted employee should be asked give his statement in defence. After he has finished his statement he should be asked to sign after inserting the following remarks:

**“Read over, explained and admitted that the above statement has been given by me”**

If he refuses to sign or refuses to give a statement, a remark to that effect should be recorded in the proceedings.

The charge-sheeted employee should then be cross-examined by the Management’s representative in the same manner as other witnesses.

After the statement of the charge-sheeted employee and his cross-examination, he should be asked to examine his witnesses, if any. If the employee has no witnesses to examine, or refuses to examine them, a statement to that effect should be recorded so that it could be proved later that the employee was given an opportunity to bring his own witnesses but he declined to do so. If, however, the charge-sheeted employee wishes to examine witnesses in defence he should be given every reasonable opportunity to do so. If he cites witnesses who are his fellow employees, arrangements should be made to call them. If, however, the witnesses cited by him are outsiders over whom the employer has no control, it is the responsibility of the employee alone to present them at the enquiry. Witnesses tendered by the charge-sheeted employee should be examined one by one just as in the case of witnesses in the support of charge. The only difference here would here would be that the charge-sheeted workman would first examine his witnesses and then the Management’s representative would have the right to cross-examine them. At the end of the evidence of each witness, the witness concerned should be asked to sign and after inserting the following remark, the charge-sheeted employee should be asked to put his signature also.

**“Read over, explained and admitted that the above statement has been recorded in my presence”**

If the witness or charge-sheeted employee refuses to sign, a remark to this effect should be recorded. In case it is not possible to examine all the witness on the same day, the enquiry may be continued the next day or may be adjourned to another day according to the convenience of all concerned. A suitable endorsement to this effect will have to be made by the Enquiry Officer in such cases in the enquiry proceedings.

**08.7**After all the witnesses on behalf of the Company and those tendered by the charge-sheeted workman have been examined, the enquiry would come to a close. ( A draft enquiry procedure step by step is marked as Annexure ‘E’)

**08.8**Though the evidence in an enquiry can be recorded in a narrative form of statement, it is advantageous to record it in question-answer form so as to bring out the true implication of the questions and the answers thereto and the proper analysis of the evidence.

**08.9**The whole procedure relating to holding enquires, as given above, is lengthy and may appear to be a bit complicated for a layman, but it hast to be followed as closely as possible, if it is intended by the Management to exercise its right of punishment of delinquent employees without fear of its being upset later on by an Industrial Tribunal, should it be made the subject matter of an industrial dispute. However, it is not indented to say that unless the above procedure is followed strictly, the decision of the Management punishing the delinquent is bound to be upset. The rules and procedure are only handmaids of justice and unless it could be shown that the employee was misled or prejudiced in his defence and consequently there has been a failure of justice on account of some error or omission on the part of the Enquiry Officer in the observance of the correct rules of procedure for holding enquiries, such error or omission would not be deemed to be material enough to vitiate the enquiry proceedings and become cause for upsetting of the decision of the Management based thereon. Moreover, it is generally realized by the Tribunals that the persons holding domestic enquiries are not generally versed in law and as such a rigid observance of the rules of procedure prescribed by the Criminal Procedure Code or the Evidence Act cannot be expected of them. As a matte of fact, as long as it can be shown that a fair opportunity was given to the accused workman, (1) to remain present at the enquiry; (2) to cross-examine witnesses in support of charges and (3) to examine his own witnesses, minor irregularities will not vitiate the enquiry proceedings, which nevertheless should be avoided. The procedure for holding domestic enquiries. Set out above in great detail, clearly indicates as to when and where the Enquiry Officer should enter the necessary remarks in the records of the proceedings which would bear out that a fair opportunity for the purposes aforesaid was duly given to the charge-sheeted employee and it can be said that if the Enquiry Officer follows the above procedure in essence, even though not strictly to the letter, he should have little fear that his findings will be upset on grounds of procedure. (1) Enquiry Officer should acquaint himself about the procedure to be followed before he embarks on the enquiry proceedings.

(2) If at any stage of cross-examination of the witness the Enquiry Officer fells that a particular question asked is irrelevant in as much as that it has no bearing whatsoever with

**09. A few Hints**

the charge, he may disallow such a question, but a statement to this effect setting forth the reasons for disallowing such a question will have to be recorded. Similarly, no leading questions should be asked or allowed, which tantamount to forcing an answer from a witness.

(3) If at any stage of enquiry, the charge-sheeted employee withdraws from the enquiry, the further proceedings of the enquiry should be held ex-parte. It is to be borne in mind that mere withdrawal of the charge-sheeted employee from an enquiry would not entitle the Management to dispense with the holding of further enquiry into the charges.

(4) If the charge-sheeted employee behaves rudely or does not cooperate in the enquiry proceedings in the manner he should, a statement to this effect should also be recorded.

**10. Fifth Step – Recording of the findings by the Enquiry Officer**

After the conclusion of the enquiry proceedings the Enquiry Officer should give his findings as to whether or not the charges levelled against the employee are proved on the evidence recorded at the enquiry. The findings should be supported by an analysis of the evidence for his conclusion an each item of the charge – ie., why he agrees or disagrees with the management’s or employee’s contention on each of the charges. The Enquiry Officer should, as far as possible, refrain from recommending any particular type of punishment, but should leave it to be considered by the Authority empowered to decide the punishment and make the order.

**11. Sixth Step – Consideration of the Enquiry Officer Report and Findings by the Authority: Management’s Note**

After the Enquiry Officer has submitted his report and the findings, management’s note should be prepared by the Authority empowered to decide punishment. In this note it is to be indicated whether the Management concurs with the findings of the Enquiry Officer, what is the past record of the workman charged, what punishment should be awarded and so on. The authority should decide the suitable punishment warranted on the proven charges, taking into account the gravity of the misconduct on the part of the workman. Such authority may also take into consideration whether or not any extenuating or aggravating circumstances exist. The past record of service of the employee must be looked into in this connection. If the past record is clean it may be regarded as a mitigating circumstance, while if it is not so, it would be an aggravating circumstance. ( A draft Management’s note is marked as Annexure ‘F’)

**12. Seventh Step – Informing the workman in writing of the punishment decided to be given to him.**

After the decision as to the punishment to awarded to the employee has been made, it has to be

communicated to the employee concerned as expeditiously as possible. (Draft letters of punishment

are marked as Annexure ‘G’ & ‘H’.) The letter communicating the punishment should make a reference to the letter of charge issued to the employee, the enquiry held into the charges levelled against him, the findings of the enquiry officer, extenuating or aggravating circumstances, if any, the decision as to the punishment, and the date from which the punishment is to be effective. However, in cases where ‘approval’ or ‘prior’ permission of conciliation officer, court or tribunal be necessary for effecting the order or punishment under section 33 of the Industrial Dispute Act, a solightly different procedure has to be adopted in this connection. In a case where ‘prior permission’ of the conciliation officer or court or tribunal is necessary, the punishment order cannot be made effective without obtaining such permission, and as such the letter communicating punishment in such a case should state that the Management has taken or is taking steps to obtain the necessary permission form the authority concerned and that the decision of the Management to punish him would be implemented after such permission had been obtained. It may be further stated in that letter, - if the proposed punishment be that of dismissal or discharge, that pending permission of the authority to dismiss or discharge, that pending permission of the authority to dismiss or discharge him, he shall be placed under suspension, (if in such a case it is considered desirable that the employee should not visit the establishment.) But in the case where only ‘approval’ is necessary the order of punishment can be made effective at once, it being required only to make an application to the authority concerned for ‘approval’ of the Management’s action against the workman along with making a payment of one month’s wages to the workman. A fuller discussion as to when and under what circumstances ‘permission’ or ‘approval’ is necessary under section 33 of the Industrial Dispute Act follow hereunder.

**PROCEDURE REGARDING DISCIPLINARY ACTIONS DURING THE PENDENCY OF AN INDUSTRIAL DISPUTE**

**13. Express Permission**

A workman who is concerned in the dispute which is pending in conciliation or adjudication cannot be punished in regard to any matter or misconduct connected with the dispute during the pendency of such proceedings except with the express or prior permission in writing of the authority before which the proceedings are pending. Let us illustrate this. Suppose a demand charter is pending before the Tribunal, and the workers shout slogans or behave in an indisciplinary manner or choose to go on strike in support of the demand charter. Such misconduct will be deemed connected with the dispute pending

**13.1 Approval**A workman who is concerned in the dispute which is under conciliation or adjudication can be punished in accordance with the Standing Orders applicable to the workman in regard to any matter or misconduct not connected with the dispute without prior permission of the authority before whom the proceedings are pending. (a) Pay the workman one month’s wages and

(b) Simultaneously make an application to the authority before which the proceedings are pending for approval of the action already taken by the employer.

**13.2**Notwithstanding the right allowed to the employer to punish a workman concerned in a pending dispute for an act of misconduct not connected with the dispute without prior permission of the authority, but to obtain an approval after the punishment, it may be noted that a limited number of workmen known as “protected workmen” who are given special protection, cannot be punished by way of dispute or dismissal in regard to any matter or misconduct, whether connected with the dispute or not, without prior written permission of the authority before which the dispute is pending.

**13.3**It is needless to sate that a workman not concerned in the dispute under conciliation or adjudication can be punished in regard to any matter or misconduct during the pendency of such proceedings without any permission or approval of the authority before which the proceedings are pending. To sum up:

before the Tribunal and accordingly express or prior permission in writing from Tribunal concerned will have to be obtained for awarding punishment of discharge or dismissal to the employees concerned.

For example, suppose a worker is involved in theft cases. Naturally this has nothing to do with the Demand Charter pending before the Tribunal. Therefore, this misconduct cannot be said to be connected with the dispute pending before the Tribunal and no prior permission from the Tribunal for taking disciplinary action against the employee concerned would be necessary. However, is such cases where the punishment inflicted is that of discharge or dismissal, the employer has to

(a) An express permission from the authority concerned would be necessary only in the case where both of the following conditions are satisfied:

(i) the workman against whom action is to be taken is a workman concerned in the dispute;

(j) the matter or misconduct for which it is intended to punish him is connected with the dispute.

If any of the two conditions is not available, no prior permission shall be necessary from the authority before which the dispute is pending, unless he is a protected workman, in which case express permission is mandatory. In other words in the case of ‘protected’ workman permission from the appropriate authority shall be necessary even if condition (ii) above is not satisfied.

Filing of an application for approval of the authority concerned would be necessary, along with payment of one month’s wages in the case where punishment inflicted is that of discharge or dismissal, even if condition (ii) is not satisfied.

**14. Protected Workman**

Protected workman means a workman who is an officer of the Trade Union connected with the particular establishment concerned and who has been recognised as such in accordance with the rules made in this behalf.

Every year the recognised Union is expected to submit the list of office bearers to the Management with a specific request to recognise these office bearers as “protected workmen”. Under the Industrial Disputes Act the number of office bearers to be recognised as “protected workmen” shall be one percent of the total number of workmen employed subject to a minimum number of five and a maximum number of one hundred. Once these workers are recognised as “protected workmen” they are immunized to the extent that before taking disciplinary action (dismissal or discharge) against them, a prior permission in writing from the authority before whom the dispute is pending will have to be obtained. If however, there is no dispute pending, the question of obtaining permission does not arise.

**Note:**Since the matter of taking disciplinary action against the employee by way of discharge or dismissal during the pendency of proceedings before conciliation, tribunal, etc., is of delicate nature in as much as that it involves cumbersome formalities, etc., it is advisable to refer such matters for proper guidance and advice, before any action is taken.

**15. Punishments: Kinds of Punishments**1. Dismissal

2. Discharge

3. With holding increments

4. Demotion to a lower grade

5. Suspension

6. Fine

7. Warning or censure

The various punishments which may be usually awarded to workmen for the misconducts committed by them are set out below.

Of the above dismissal, discharge, suspension, may be called as ‘major punishment’, while fine warning or censure, may be called as ‘minor punishment’.

**15.1. Dismissal and Discharge**

**15.2. Discharge**

As a normal rule punishment should be commensurate with the gravity of misconduct. Thus a worker found guilty of an act of gross misconduct like theft, assault, etc., may be justifiably awarded the extreme punishment of dismissal, while a worker found guilty of ac act of minor misconduct like unpunctuality may be warned or censured.

In the establishments to which the Industrial Employment (Standing Orders) Act is applicable, the various punishments that may be awarded are specified in the Model Standing Orders or the Certified Standing Orders and as such no punishment other than that so specified can be awarded. For instance, punishment by way of withholding of an increment or demotion cannot be awarded unless they are allowed by the Standing Orders, applicable to the establishment. Similarly if service rules have been framed for an establishment, the punishment to be awarded should be in conformity with the said rules. In the establishments where Standing Orders Act is not applicable, the Management has discretion to award any appropriate punishment for a particular misconduct subject to the obvious qualification that the punishment should not be unduly excessive.

**Dismissal:**Dismissal the extreme punishment. Infliction of this extreme punishment on an employee would be justified if any conduct on the part of an employee may be deemed to be incompatible with the faithful discharge of his duties, and it is considered undesirable or against the interest of the employer to continue him in employment.

On the basis of the above principle serious misconduct like willful insubordination, riotous and a disorderly behaviour, dishonesty, willful negligence of wok, would justify dismissal of an employee.

In its legal sense discharge is not a punishment as such, but merely an incidence on employment and denotes operation of such part of the contact between them as relates to terminating it by giving agreed notice or by payment and acceptance of money in lieu of such notice. When the contract of service is thus terminated the reciprocal promises and obligations are said to be discharged. Therefore, at common law the term discharge is used to describe the termination of an employee’s service for any reasons, which do not imply any act of misconduct, or does not cast a slur on him. Though the right of the employer to put an end to the contract of employment between him and his employee is recognised, it must be noted that if the employee challenges the termination of his services as being not a bona fide exercise of the right of the employer but as a colourable exercise of such right in the form or a discharge simpliciter when in effect it is a dismissal for some misconduct, the employer is required to prove his bona fide is this respect. However it is significant that the term ‘discharge’ has come to acquire a meaning analogous to ‘dismissal’ and an employee may be punished by way of discharge also, in which case it is not considered as discharge simpliciter but discharge in lieu of dismissal.

 1**5.3. Withholding of Increments**

**15.4. Fine**

 Therefore, though discharge or dismissal, both have the same result, i.e., termination of the services of an employee, discharge is considered a punishment less severe than that of dismissal. The stigma attached to the expression ‘dismissal’ is not attached to the expression ‘discharge’. In the case of discharge, the agreed notice or payment in lieu thereof has to be given but in the case of dismissal no such notice or payment in lieu thereof is required to be made.

Some Standing Orders or Service Rules prescribe withholding of an increment or demotion to a lower grade as one of the punishments, which can be awarded for misconduct. As a normal rule, the employees in the graded scales enjoy benefit of regular annual increments. These increments accrue automatically until the maximum of the scale is reached, and stoppage of annual increment on any occasion when it is normally due, would amount to punishment of the employee concerned. Annual increments constitute recognition of not merely the growing needs of a workman’s family, but also the growing experience and consequent efficiency of the workman. The questions of efficiency, therefore, is a very relevant consideration for the Management for awarding annual increments. The employer has the right to expect from his employees a certain minimum level of efficiency and, therefore, if he finds that a particular employee has failed to attain that level, he would be justified in withholding the increment. However, this cannot be suddenly done at the end of the year. The employee concerned should be informed in writing from time to time about his deficiencies and given opportunity to improve his efficiency. If in spite of his being informed about his deficiencies from time to time there is no improvement in his efficiency then withholding increment will be perfectly justified. Withholding of increment for continued inefficiency in normal course may not, therefore, be considered as punishment for misconduct, but an implied service condition. However it would amount to a punishment if it is specifically awarded as a punishment for a specific misconduct after holding an enquiry which may be milder punishment than dismissal or discharge.

**Important**

Withholding of annual increment as punishment if not prohibited by Standing Orders or Service Rules is deemed to be a major punishment as the accumulative effect of losing an increment would be considerable and generally speaking, the acts of misconducts for which this punishment may be awarded are the same as those for which the extreme punishment of dismissal of discharge may be awarded.

Fine means a deduction from the wages of an employee by way of punishment.

Power to make penal deductions from the remuneration of the employee is not an implied term or ordinary contract between the master and servant. In Certified Standing Orders of certain establishments, such power is given to the employer but here again this power is not absolute inasmuch

as the Payment of Wages Act, 1036 comes in the way and places several statutory restrictions on the exercise of such power.

The restrictions inter alia are:

a) No fine shall be imposed on any employee until he is given an opportunity of showing cause against the fine;

b) All fines and realizations shall be recorded in a register in the prescribed form and should be employed only to such purposes beneficial to the employees as are approved by the prescribed authorities; and

c) The amount of fine to be imposed shall not exceed the statutory limit. **15.5. Suspension**

**15.6. Warning**

 Suspension means prohibiting an employee from performing his duties and withholding wages for that period as punishment. During the period of suspension the contract of employment between the employer and the employee is said to be under suspension.

The period of suspension should not, however, exceed the maximum period stipulated in the Standing Orders. In the Model Standing Orders framed by the Maharashtra Government, there is a provision of awarding punitive suspension (subject to maximum of 4 days).

It shall however be noted that suspension as punishment is quiet distinct from suspension pending enquiry.

Warning is an admonition of an employee for a minor misconduct warning him against commission of misconduct of a familiar nature or any other misconduct in future.

Warning may be issued orally or in writing. But in cases of habitual minor misconducts or inefficiency it is desirable that these are issued in writing and brought on record so that they may support, if necessary, any substantial punishment that may have to be given to the employee in future.

Since warning is not considered as a substantive punishment, the elaborative procedure prescribed for the award of punishment like dismissal, discharge, etc., need not be followed. But it is desirable that the employee is asked to explain his conduct before the warning is issued. Whether his explanation is satisfactory or not is for the Management to decide and to that extent issuing of warning after receipt of explanation (if fond unsatisfactory) will be perfectly in order.

**16. What about Probationers?**

 Probation means ‘proving’ and accordingly an employee on probation or a probationer means a person who has been given an opportunity to prove his worth before he is admitted to the regular employment.

Apart from cases of victimization, it is the exclusive jurisdiction of the employer to decide whether or not the work of a probationer during the period of probation has been satisfactory and to that extent to confirm him. However, it is to be born in mind that probationer comes within the definition of ‘workman’ under the Industrial Disputes Act, and an industrial dispute relating to his discharge can be

validly raised and adjudicated upon by an Industrial Tribunal. The Supreme Court has observed that an appointment on probation gives an employer no right to terminate the services of an employee before the expiry of the probationary period, except on the ground of misconduct or other sufficient reason in which case even services of a permanent employee can be terminated.

In view of the above observation of the Supreme Court, it will therefore be advisable:

            a) to terminate the services of a probationer only on the expiry of his probationary period and not earlier;

            b) that if the performance of his duties during probationary period is found to be unsatisfactory, it should be brought to his notice in writing from time to time. This will strengthen the Management’s case, inasmuch as that a fair opportunity was given to him to show marked improvement n his performance. If a probationer, however, commits a misconduct during the probationary period, he can be punished like any other permanent workman, by following the required disciplinary procedure.

**17. Whether Act Subversive of Discipline Committed Outside the Factory can be deemed to be Misconduct.**

 Normally, the employer is not the general custodian of the morals of his workmen. However, if the act subversive of discipline committed outside the establishment or outside the working hours is found to

a) be inconsistent with the fulfillment of the express or implied conditions of service, or

b) be directly linked with the general relationship of employer and employee, or

c) have a direct connection with the contentment or comfort of the men at work, or

d) have a material bearing of the smooth and efficient working of the concern,

 the employer will be well within his rights to take disciplinary action against the employee concerned.

**18. When Tribunal Can Interfere**

**Important:**It must be noted that an Industrial Tribunal can interfere with the decision of the Management in regard to dismissal or discharge when it finds that:

a) there is a want of bone fides, or

b) it is a case of victimisation or unfair labour practice, or

c) there is violation of principles of natural justice, or

d) there is a basic error of facts, or

e) there has been a perverse findings on the materials placed at the enquiry.

 If any disciplinary action by the employer does not suffer from any of these infirmities, there is no possibility of it being upset by any Industrial Tribunal.

**19. Epilogue**

The procedure for taking disciplinary action to be followed by an employer, is not an empty formality. It is, in substance, the adherence to the principles of natural justice, which is a must in any social or

industrial set-up. Legalities and technicalities apart, equity demands that these principles are followed by every employer. The Managers must, therefore, fully acquaint themselves with principles and practices in conducting domestic enquiries and taking disciplinary action.

**20. Specimen Forms**

**ANNEXURE ‘A’**

**Show Cause Notice**

Shri……………………………………………

Ticket No…………………………………..

**Show Cause Notice**

It has been reported against you as under:

On …………………….1 at ………………………..2 you ……………………3 The act(s) as above alleged to have been committed by you amount to misconduct.

Accordingly, you are hereby called upon to submit your written explanation and show cause why disciplinary action should not be taken against you.

Your explanation must reach the undersigned by …………………………….4 Should you fail to submit your explanation as required, the matter will be disposed of without any further reference to you.

1. Date of the incident

2. Time of the incident

3. Full details of the alleged misconduct

4. Allow 2 days for submission of the explanation.

Date: \_\_\_\_\_\_\_\_\_\_\_ **Manager**

**ANNEXURE ‘B’ 1**

**Simple Warning**

Shri……………………………….

Ticket No………………………

**Warning**

Your explanation dated …………………… in reply to show cause notice dated …………….. has been found to be unsatisfactory.

You are accordingly hereby warned.

You are further advised in your own interest to be cautious and not to repeat such an act in future.

Manager

Date:…………..

**ANNEXURE ‘B’ 2**

**Stern Warning**

Shri……………………………………….

Ticket No……………………………….

**Stern Warning**

Your explanation dated ………………..in reply to show cause notice /letter of charge dated…………………….. has been found to be unsatisfactory.

The gravity of misconduct committed by you is such that it warrants severe punishment. However, we are taking a lenient view this time and have decided to award you this stern warning.

Should you repeat any such thing in future or commit any other misconduct we will not hesitate to take strict disciplinary action against you.

Manager

Date:……………………………….

**ANNEXURE ‘C’**

**Charge – Sheet**

Shri………………………………….

Ticket No…………………………

**Charge – Sheet**

It has been reported against you as under:

On ………………………..1 at …………………..2 you……………………………3 The above act(s) on your part constitute serious misconducts as indicated hereunder:

1 …………………….

2 …………………….4

1. Date of the incident

2. Time of the incident

3. Full details of the alleged misconduct.

4. Look into the Model Standing Orders framed by the Stage Government of your State and reproduce the wording of misconduct(s) which match an incident. For example: a) Suppose the worker is involved in theft case, the wording of the misconduct given in Model Standing Orders is : “Theft, fraud or dishonesty in connection with the employer’s property.”

b) Suppose a worker has used abusive language to his supervisor – the wording of misconduct given in the Model Standing Orders is:

“Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline.”

Accordingly you are hereby called upon to submit your written explanation for the above misconducts. Your explanation must reach the undersigned by …………………….5

6 Since the charge(s) levelled against you is/are of grave and serious nature, you are hereby suspended pending further proceedings.

Manager

Date:……………..

Note: It is advisable to attach vernacular translation of the above charge – sheet.

5. Give at least 48 hours for submission of the explanation.

6. This clause should be inserted only if it is felt necessary to suspend the employee pending enquiry.

**ANNEXURE ‘D’**

**Notice of Enquiry**

Shri……………………………

Ticket No…………………….

**Enquiry**

a) We are in receipt of your explanation dated ………………….. in reply to our letter charge dated …………………. Which has been found to be satisfactory.

**Note:**

Should the employee fail to submit explanation, as required, write:

(b) we find you have failed to submit your explanation in reply to our letter of charge dated …………… issued to you on ……………………. \* It has therefore been decided to hold and enquiry into the charge(s) levelled against you. The enquiry will be held by Shri. …………… on …………….(date) at ……………..(time) at ……………..(place). Accordingly, you are hereby required to present yourself at …………..(place ) at …….(time) on ………(date) for the purpose of enquiry.

At the enquiry you will be given full opportunity to contact your defence by examining your witness and cross-examining witnesses in support of charge.

\* Separate para applicable in both (a) & (b)

You are permitted to be defended by a workman working in the same department as yourself, if you so desire.

Please note that if you fail to present yourself at the enquiry as advised, the Enquiry Officer will proceed against you ex-parte.

Manager

Date:

Note:

It is advisable to attach vernacular translation of the above notice.

C.c.: Shri …………………(indicate the name of the official who has to conduct the enquiry) with the request to hold an enquiry and submit his findings.

**ANNEXURE ‘E’**

Record of the Enquiry Proceedings into the Charge-sheet No…………..dated …………..issued to Shri………….. (Designation) ………………………..Ticket No………………held on ……………………………..at …………………..in the office of Shri……………………………….

Present:

Shri…………………………..(designation) Enquiry Officer.

Shri…………………………….(designation) Management’s representative.

Shri……………………………..(designation) Representative on behalf of the workman charged, if any.

Shri…………………………….. Workman charged.

The contents of the Charge-sheet No………..dated ……………….. were read out and explained to the Workman charged by the Enquiry Officer.

As the workman charged does not admit the charge(s) the Enquiry proceed.

1. Statement by the Management’s representative. This should be re recorded first. In this statement the Management representative. This should be recorded first. In this statement the Management representative should narrate in detail the circumstances leading to the charge-sheet. He may support it by documentary evidence, if any. Copies of all such documents should also be allowed an examination of the originals of all documents. If any pre-recorded statements are to be used in evidence the charge-sheeted employee must be given an opportunity to cross-examine the person whose statement is so recorded. In the alternative such person can be examined as a witness de novo. **2. Examination of the witnesses in support of Charge**

Or

As the Workman admits the charge(s) levelled against, him, it is not felt necessary to hold the further enquiry.

In support of his contention, he has then to examine his witness, as shown in (2) below.

**Witness No. 1.**

Statement of Shri………………………………………………

(Designation)…………..(Ticket No)……………………

(Recorded statement)

Signature of the Witness:

…………………………………..

Date:……………………………..

Read over, explained and admitted, that the above statement has been recorded in my presence.

(Signature of the Workman charged)

…………………………………………………….

Date:………………………………

(Signature of the workman’s representative)

…………………………………………………………..

Date:………………………………………..

(Signature of the Enquiry Officer)

…………………………………………….

Date:……………………………………

At this stage, the workman charged Shri…………………… may be asked by the Enquiry Officer that if he wishes to cross-examine Shri… he may do so.

Q . (By the Workman Charged)

A. (By Shri…………. Witness )

and so on.

(If the Workman charged refuses or has no questions to ask the witness, then statement to this effect should be recorded as under:)

“The Workman Charged refuses to put any question to the witness/he has no question to ask the witness”

Read over, explained and admitted, that whatever is recorded above, it has been recorded in my presence.

(Signature of the Workman Charged)

…………………………………………………..

Date:………………………………………….

(Signature of the Witness)

Date:………………………….

(Signature of the Enquiry Officer)

Date:………………………….

**Note:**If there are some clarifications to be sought from the witness(es) in support of charged the Company’s representative may put specific questions to seek those clarifications. It is important that these clarifications are recorded at the enquiry.

Witness No. 2,3,and so on.

Q. …………………………..

(The same procedure as mentioned above is to be repeated). At this stage the examination of witnesses for support of charge(s) is over and Shri……, the workman charged, is asked to make a statement.

(Record Statement of the Workman Charged)

Signature of the Workman Charged)

…………………………………………………..

Date:…………………………………………..

(Signature of the workman’s representative)

…………………………………………………………

Date:……………………………………………

(Signature of the Enquiry Officer)

…………………………………………………………

Date:……………………………………………….

At this stage the Enquiry Officer asked the Company’s representative whether he would like to cross-examine Shri……………………..(Workman charged).

A. ………………………….

Q. …………………………..

A. ………………………….

and so on .

(Signature of the Workman Charged)

………………………………………………………..

Date:……………………………………………..

(Signature of the workman’s representative)

………………………………………………………..

Date:……………………………………………………

(Signature of the Company’s representative)

……………………………………………………………

Date:…………………………………………………..

(Signature of the Enquiry Officer)

Date:…………………………………………………….

**Note :**If the Company’s representative has no question to ask the workman charged a statement to this effect should be recorded. “Company’s representative had no question to ask the workman charged Shri……………………………………….”

After this the workman should be asked to produce his witness, if any.

**3. Examination of Witnesses in Support of Defence of the Workman Charged**

Witness No. 1

Statement by Shri……………………………………………. (Designation) …………………………………………..( Ticket No.)……………………………………………………………………

(Record the Statement)

Signature of Shri………………………………

Date:…………………………………………….

Read over, explained and admitted, that the above statement has been recorded in my presence.

(Signature of the Workman Charged)

…………………………………………………

Date:………………………………………..

(Signature of the workman’s representative)

…………………………………………………………

Date:…………………………………………………

(Signature of the Enquiry Officer)

Date:…………………………………………………

At this stage, the Enquiry Officer asked the Management’s representative whether he would like to cross-examine Shri…………………..(witness in support of defence)

Q. …………………………..

A. ………………………….

Q. …………………………..

A. ………………………….

and so on.

(Signature of the Workman Charged)

……………………………………………………

Date:……………………………………………

Signature of the workman’s representative)

……………………………………………………..

Date:……………………………………………….

(Signature of the Company’s representative)

…………………………………………………….

Date:………………………………………….

(Signature of the Enquiry Officer)

…………………………………………………

Date:……………………………………….

**Note:**If the Management’s representative does not want to cross-examine the witness, a statement to this effect should be recorded. “Management’s representative had no question to ask Shri……………………”

Witnesses 2, 3 and 4 and so on.

Same procedure as mentioned above is to be repeated. After the examination of the witness produced by the workman is defence is over the enquiry should be formally concluded with the following remark:

“At this stage the Enquiry was closed.”

Date…………………time……………..

(Signature of the Workman Charged) ……………………………………… Date:……………………………

(Signature of the representative of the workman)

Date:…………………………………………

(Signature of the Company’s representative)

………………………………………………….

Date:………………………………………..

(Signature of the Enquiry Officer)

……………………………………………..

Date:………………………………………..

**Note:**It may be noted that in a domestic enquiry no arguments are required to be made by either of the parties after leading evidence for or against the charge, as in a Court of Law. In a domestic enquiry the procedure adopted is simple, viz., the management’s representative first presents his case in detail, then produces evidences, oral or documentary, in support of the charge. The witnesses produced are cross-examined by the charge-sheeted employee after their examination-in-chief. After the evidence in support of the charge the charge-sheeted employee makes a statement in defence and then produces evidence, oral or documentary, in support of his contentions. The Witness produced by the employee are cross-examined by the management’s representative. The enquiry then comes to an end. It may also be noted that though the enquiry officer can ask questions to the witness by way of clarification he should not cross-examine the witnesses as such.

Cross-examination of the witness is the function of the parties concerned and not of the enquiry officer.

**ANNEXURE ‘F’**

Management’s note (this is to be prepared after the receipt of the enquiry officer’s report and findings and must be placed on the record).

I have carefully perused the record of the enquiry proceedings and findings of the Enquiry Officer.

Shri…………………………… was present and participated in the enquiry proceedings throughout. I am satisfied that Sjhri………………. Was given full opportunity to conduct his defence by cross-examining witnesses in support of charge and producing witnesses in his defence.

I concur with the findings of the Enquiry Officer and hold Shri………………guilty of the misconduct(s).

I have looked into Shri………………….’s past record and find there is nothing against him\* and find that on ………………………occasion(s) he was given warning note(s) for committing misconduct(s). Having

Delete whichever is not applicable.•

regard to the gravity of the misconduct, I fell that it warrants, extreme punishment, that of dismissal / discharge. Accordingly I hereby order that he be dismissed / discharged from the Company’s service with immediate effect.

**ANNEXURE ‘G’**

Shri…………………………………

Ticket No…………………………

**DISMISSAL**

This refers to the letter of charge-sheet No……. dated …………… and the subsequent enquiry held on …………………… in the office of Shri………………

We find from the proceedings of the enquiry that full opportunity was given to you for conducting you defence by cross-examining witnesses in support of charge(s) and producing witness in you own defence. Also you participated in the enquiry proceedings throughout.

We have carefully gone through the record of the enquiry proceedings, other connected papers and findings of the Enquiry Officer. We concur with the findings of the Enquiry Officer inasmuch as that on the evidence recorded in the enquiry the charges levelled against you have been sufficiently proved.

Having regard to the gravity of misconduct(s) and in view of your unsatisfactory past record **1**we have decided to dismiss you from the Company’s services. Accordingly you are hereby dismissed from the Company’s services, with effect from …………………………………………

Please collect all your dues from ………………………at ………………………………..2

Manager.

Date: ………………….

Note: It is necessary to attach vernacular translation of the above.

**1.**This should be recorded only when the past record is not satisfactory and he has been awarded some kind of punishment, not otherwise.

**2. Dues should be paid in 24 hours.**