

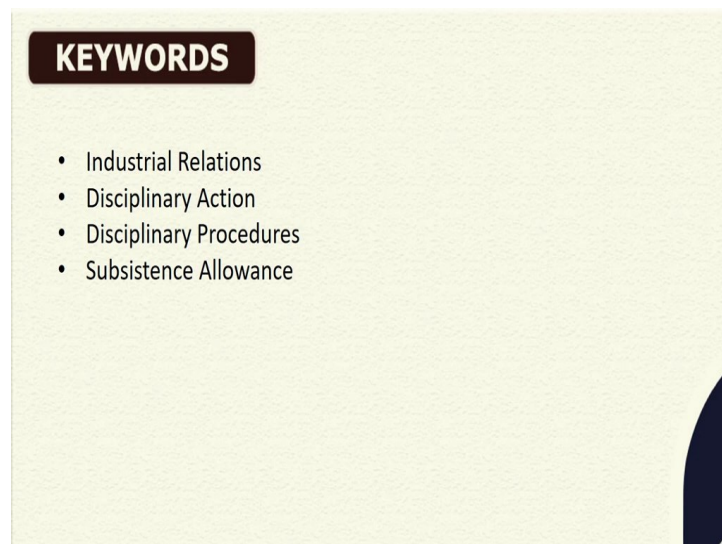
New Labour Codes of India
Professor K D Raju
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Indian Institute of Technology, Kharagpur
Lecture: 20
Disciplinary Action and Procedures

Dear students in this class we are going to discuss about is one of the very important topics which is disciplinary action and procedures. So, we are going to discuss about the disciplinary reaction. But there is any statutory recognition for disciplinary action, in companies, establishments and factories.

And what are the procedures? The minimum procedures to be followed are whether there is any provision in the Industrial Standing Orders Act, whether it is completely in the hands of the employer, whether specifically in accordance with mentioning under the standing orders, and whether it is the other statutory laws are applicable to disciplinary proceedings.

So, what is the process, general process followed in governmental services, and non-governmental services this we are going to discuss and also the principles of natural, the applicability of the principles of natural justice through the entire process of disciplinary action also we are going to cover in this particular lecture?

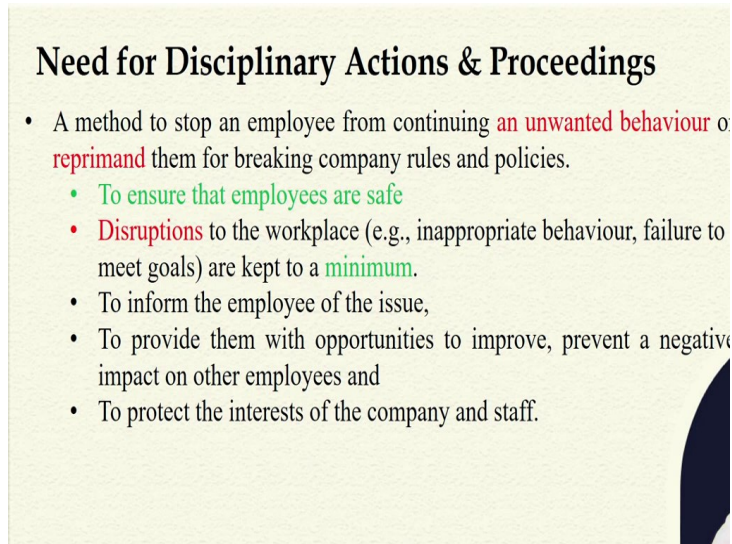
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So, we know that disciplinary action is in every establishment. So, in order to maintain disciplinary action is required in order to maintain the entire environment working environment, so disciplinary procedures should be written. And in the case of disciplinary action, what are the different kinds of disciplinary actions?

In the case of suspension whether the employees are eligible to get subsistence allowance. What is the rate of allowance? In that particular case is there any statutory minimum period for completing every enquiry? So, is there any limitation for imposing penalties? So, all these things which we are going to discuss today.

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Need for Disciplinary Actions & Proceedings

- A method to stop an employee from continuing **an unwanted behaviour** or **reprimand** them for breaking company rules and policies.
 - To ensure that employees are safe
 - **Disruptions** to the workplace (e.g., inappropriate behaviour, failure to meet goals) are kept to a **minimum**.
 - To inform the employee of the issue,
 - To provide them with opportunities to improve, prevent a negative impact on other employees and
 - To protect the interests of the company and staff.

And if that, so the if the employee violates discipline, disciplinary action or reprimand is required. And if the workman is found to be breaking company rules and procedures or showing unwanted behaviour. Then the employer wants to maintain harmony, and the ambience, and the environment in the undertaking, so you require disciplinary action.

Recognized disciplinary action for inappropriate behaviours, and failures. So, and also the employees must know about these particular procedures. The employees must behave in such a way that will help the undertaking industry, and also their behaviour towards their fellow workmen also be controlled. And the workmen must know what is the negative impact on other employees. To protect the interest of the company and staff and also the business interest of the employer is also involved in every disciplinary action.

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Need for Disciplinary Actions & Proceedings

- Disciplinary action **prompts employees** to:
 - **Observe rules and regulations**
 - **Improve** their future behaviour and performance
 - **Function** in a team-based environment
 - **Meet organizational expectations**

So, in the disciplinary proceedings, we can say that every worker must observe rules and regulations. And this is required to improving in their future behaviour and performance. And they will be able to function in a team-based environment. And if there is discipline then only they will meet organizational expectations. So, without a disciplinary code, no company can function. If there is a violation of conduct, aggressive behaviours can be met with disciplinary actions.

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Disciplinary Actions & Proceedings for **Misconduct**

- **No** specific section were provided with respect to the **definition of Misconduct or the procedure of the disciplinary enquiry** under the now **Repealed Industrial Employment (Standing Order) Act, 1946**.
- An **inclusive list of certain Acts and Omissions** to be considered as **Misconduct (General & Coal Mines) and Procedure thereof** was provided in the now **Repealed Industrial Employment (Standing Order) Central Rules, 1946**.

But there is no specific provision which is included in the earlier code the repealed Industrial Employment Standing Orders Act 1946. But it only mentions about certain categories of

misconduct and the procedure is not at all there. And also we can see that the industrial employment standing orders act which talks about the formation of industrial standing orders.

But these standing orders can comply this contains the complete rules and regulations with regard to disciplinary action and misconduct. So, the acts, and omissions can be clearly mentioned under the standing orders act.

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Misconduct & Disciplinary Action - General/Non-Coal Mines

Industrial Employment (Standing Order) Central Rules, 1946 - Report Misconduct - General

The following acts and omissions **shall be treated as misconduct**.

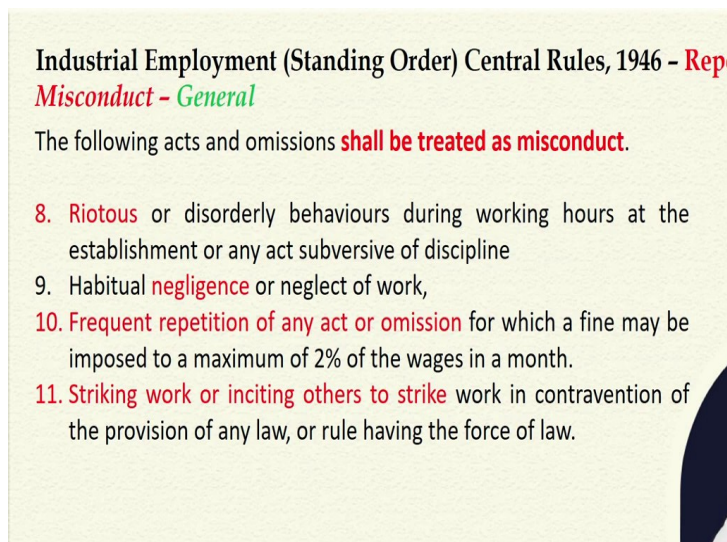
1. Wilful **insubordination or disobedience**, whether alone or in combination with others, to any lawful and reasonable order of a superior
2. **Theft, fraud or dishonesty** in connection with the employer's business or property
3. **Wilful damage** to or loss of employer's **goods or property**,
4. Taking or giving **bribes** or any illegal gratification
5. **Habitual absence without leave** or absence without leave for more than 10 days
6. Habitual **late attendance**

So, this disciplinary action which we can see that the list of actions will be considered as misconduct under the Industrial Employment Standing Orders Central Rules 1946. So, if you look into the CCS rules central government service rules also we can find these termed as treated as misconduct.

For example, willful insubordination, disobedience by a worker a workman alone or by combination with others and also disobeying a lawful order of the superior. Theft, fraud, and dishonesty in connection with the employee's business or property, not the other way around. The employer does not have to look into his honesty outside the establishment.

Willful damage to the property of the establishment and taking or giving bribes or taking any illegal gratification are related to the establishment. Habitual absence without leave for more than 10 days, will be considered as misconduct. Habitual late commerce, late attendance habitual breach of any law applicable to the establishment very simply disobeying the standing orders of the company can be considered as misconduct.

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Industrial Employment (Standing Order) Central Rules, 1946 - Report

Misconduct - General

The following acts and omissions **shall be treated as misconduct.**

8. **Riotous** or disorderly behaviours during working hours at the establishment or any act subversive of discipline
9. Habitual **negligence** or neglect of work,
10. **Frequent repetition of any act or omission** for which a fine may be imposed to a maximum of 2% of the wages in a month.
11. **Striking work or inciting others to strike** work in contravention of the provision of any law, or rule having the force of law.

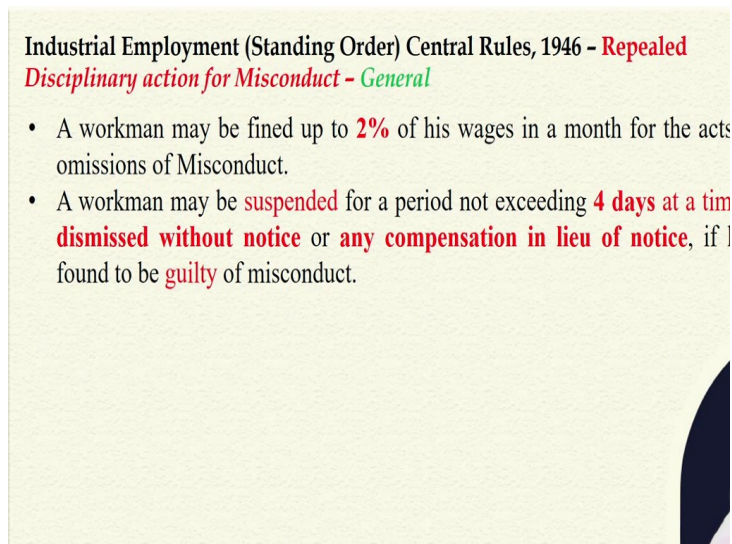
But also we can see the other categories riotous, disorderly behaviour during working hours, towards the supervisors or to fellow workmen. Habitual negligence or neglect of work. Frequent representation of such omissions or any kind of activity that he was not supposed to do. And the employer can even impose 2 percentage of his monthly wages as a penalty in such cases.

Then striking or inciting others to strike. So, strike here means illegal strike in contravention of the provisions of any of the laws in force. So, inciting also is we saw that strike when we have dealt with the strike, now there is penal provisions are in the IR code with regard to illegal strikes or inciting strike.

So, such kind of people will be even the union leaders will be penalized if they incite illegal strikes. So, taking part in this illegal strike also can be considered as misconduct. Yesterday the last class, we saw about the incident, that is happened in the Toyota plant in Bangalore.

So, the writer's behaviour taking continuous illegal strikes without any notice. So, more than 150 employees were given suspension as a part of disciplinary action, actions can be taken against them.

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Industrial Employment (Standing Order) Central Rules, 1946 - Repealed
Disciplinary action for Misconduct - General

- A workman may be fined up to **2%** of his wages in a month for the acts or omissions of Misconduct.
- A workman may be **suspended** for a period not exceeding **4 days at a time** or **dismissed without notice** or **any compensation in lieu of notice**, if found to be **guilty** of misconduct.

And more importantly, we can see the rules says that even 2 percent of the monthly wages can be fined as omissions of misconduct. So, these workmen can be suspended, if 4 days at a time and also even the workmen can be dismissed without notice. And if he is found to be conducting misconduct, he can be terminated, his services can be terminated without compensation or even in lieu of notice. No notice is required, in the case of misconduct.

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Industrial Employment (Standing Order) Central Rules, 1946 - **Repealed**
Disciplinary action for Misconduct - General

1. Where a disciplinary proceeding against a workman
 - i. is **contemplated** or
 - ii. is **pending** or
 - iii. where **criminal proceedings** against him in respect of any offence are **under investigation or trial** **and**
2. The **employer is satisfied** that it is **necessary or desirable** to **place** the workman **under suspension**, he may, by order **(with reasons)** **in writing** suspend him.
 - **A statement with reasons in detail shall be supplied to the workman** within **a week** from the date of suspension.

So, and also here we can see that see in certain criminal proceedings. So, if you are involved in certain criminal proceedings that are also pending or contemplated if somebody is arrested especially in the case of government servants. Those who are arrested remained in custody for more than 24 hours.

So, he shall be presumed to be or deemed to be automatically suspended from service. So, if the suspension the question is whether the suspension is required during the inquiry period it will depend upon the facts of the case. So, if his suspension that particular person's suspension is required, then he can be suspended. And most importantly his presence in that particular establishment is going to influence the entire inquiry, then he can be suspended. And the inquiry period he can be suspended.

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Industrial Employment (Standing Order) Central Rules, 1946 - Repealed
Disciplinary action for Misconduct - General

- Suspended workman be paid a subsistence allowance
 - ❑ For the **First 90 days** **one-half(1/2)** or **50%** of the basic wages, dearness allowance and other compensatory allowances
 - ❑ For a period **exceeding 90 days**, **three-fourths(3/4)** or **75%**
 - ❑ If **prolonging** of enquiry is **directly attributable** to the workman, exceeding 90 days, be **reduced** to **one-fourth(1/4)** or **25%**
- Where the enquiry is by an **outside agency**, the subsistence allowance shall,
 - ❑ For the first **180 days**, **one half(1/2)** or **50%**
 - ❑ For a period **exceeding 180 days**, **three-fourths(3/4)** or **75%**
 - ❑ If **prolonging** of enquiry is **directly attributable** to the workman, exceeding 180 days, be **reduced** to **one-fourth(1/4)** or **25%**

But during the suspension period subsistence allowance must be provided to the suspended employee. So, the first 90 days 50 percent of the basic wages and dearness allowances and other compensatory allowances. So, in short, we can say that 50 percent of the salary he is eligible to get up to 90 days.

Exceeding 90 days that is 3 months, beyond 3 months he is eligible to go to 75 percent. If the prolonging of inquiry is if it is attributable to the workman exceeds 90 days then it can be reduced to 25 percent, if the reason is the employee or workman then it can be reduced to 25 percent.

So, if the inquiry is done by an outside agency. So, the substance allowance again for the first 180 days is 50 percent and exceeding 180 days it is 75 percent. And if any enquiry is directly attributable to this workman exceeding 180 days then it will be reduced to 25 percent. So, one fourth that is 25 percent. So, compensation is also prescribed under the ID act.

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Industrial Employment (Standing Order) Central Rules, 1946 - **Repealed**
Disciplinary action for Misconduct - General

- The workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.
- The proceedings of the enquiry shall be recorded in Hindi or in English, or the language of the State.
- The proceedings of the inquiry shall be completed within 3 months or extended period (with reasons recorded)

And also the workman in all the disciplinary proceedings can present his case, he can appear in person or he can be represented by office bearers of trade unions. And now representative trade unions as well as the representative trade union councils also are permitted to appear on behalf of the suspended employee or the employee is provided with the charge.

So, the enquiry should be conducted when according to the local language and the proceeding should be completed within 3 months. So, there is extended period of time and the reason should be recorded.

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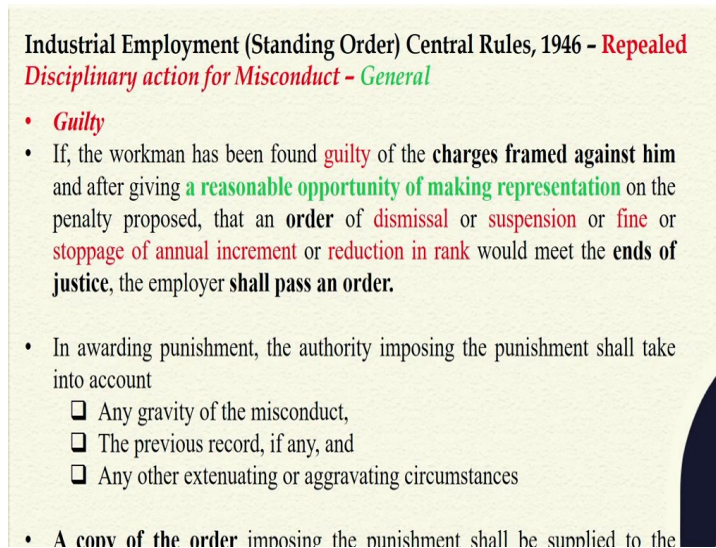
Industrial Employment (Standing Order) Central Rules, 1946 - **Repealed**
Disciplinary action for Misconduct - General

- **Not Guilty**
- If the workman has been found to be not guilty, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages after deducting the subsistence allowance paid to him for the period.

So, if, after the inquiry, he can be found guilty or he can be found not guilty. So, if he was found to be not guilty then he shall be deemed to have been on duty for all purposes during

his suspension period. And he is not only entitled to wages and also he is entitled to all allowances during the period of suspension.

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Industrial Employment (Standing Order) Central Rules, 1946 - Repealed
Disciplinary action for Misconduct - General

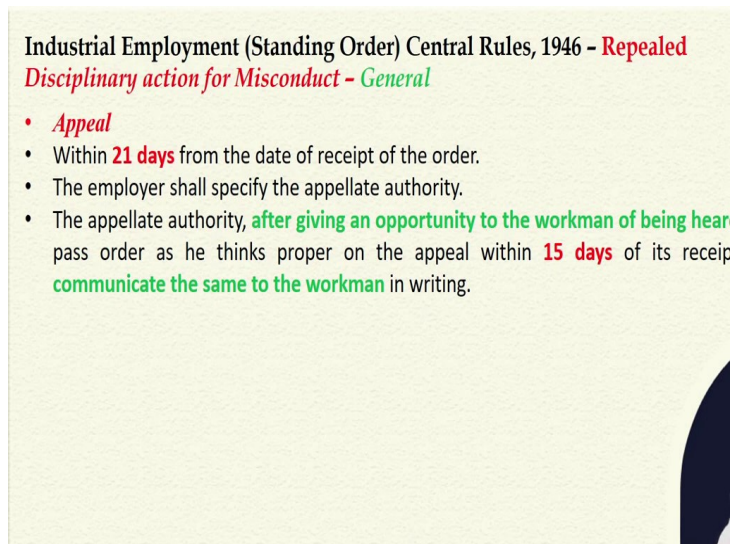
- **Guilty**
- If, the workman has been found **guilty** of the **charges framed against him** and after giving **a reasonable opportunity of making representation** on the penalty proposed, that an **order** of **dismissal** or **suspension** or **fine** or **stoppage of annual increment** or **reduction in rank** would meet the **ends of justice**, the employer **shall pass an order**.
- In awarding punishment, the authority imposing the punishment shall take into account
 - ☐ Any gravity of the misconduct,
 - ☐ The previous record, if any, and
 - ☐ Any other extenuating or aggravating circumstances
- **A copy of the order** imposing the punishment shall be supplied to the

And if he is found to be guilty then the punishment will be imposed on him. So, if he is found to be guilty of the charges framed against him and after giving a reasonable opportunity of hearing that is why I said that there are a lot of jurisprudence on compliance with the principles of natural justice.

So, you have to give a reasonable opportunity of making representations with regard to all hearings. And after finding him guilty and an order will be served on him there must be a chance to be given, a chance of hearing should be given even after imposing the penalty. So, the penalty can be in the form of dismissal, or fine, stoppage of annual increment, reduction in rank, and also shall pass any order for example another category in government service, central government service rules which you can find is compulsory retirement.

So, when imposing such punishment the enquiry authorities should look into the gravity of the misconduct. And the previous record of the employee and also any aggravating circumstances. And a copy of the order should be supplied to the workman concerned and the process which is mentioned.

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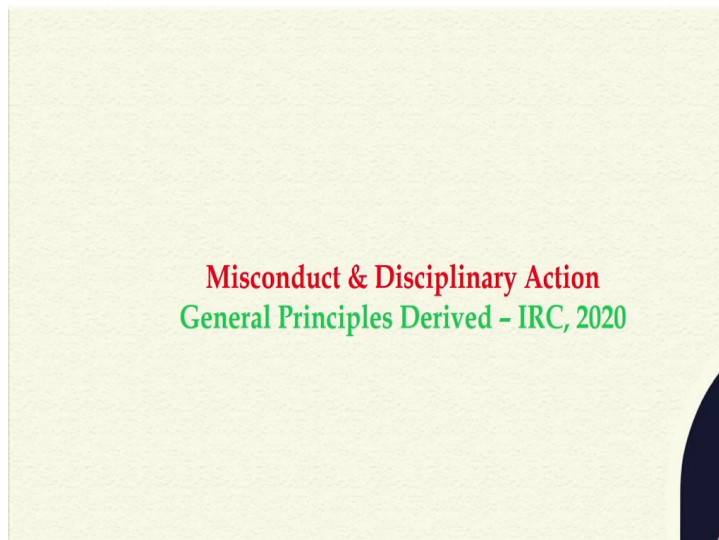


Industrial Employment (Standing Order) Central Rules, 1946 - **Repealed**
Disciplinary action for Misconduct - General

- *Appeal*
- Within **21 days** from the date of receipt of the order.
- The employer shall specify the appellate authority.
- The appellate authority, **after giving an opportunity to the workman of being heard**, shall pass order as he thinks proper on the appeal within **15 days** of its receipt and **communicate the same to the workman** in writing.

So, an appeal will lie to the appropriate authorities within 21 days from the receipt of such an order by the workman. And the employer also can specifically specify the appellate authority mentioning that he can approach this particular appellate authority from the order. And once the appellate authority has been given an opportunity of being heard shall pass an order and after hearing the parties pass an order within 15 days and also communicate such order to the workmen in writing.

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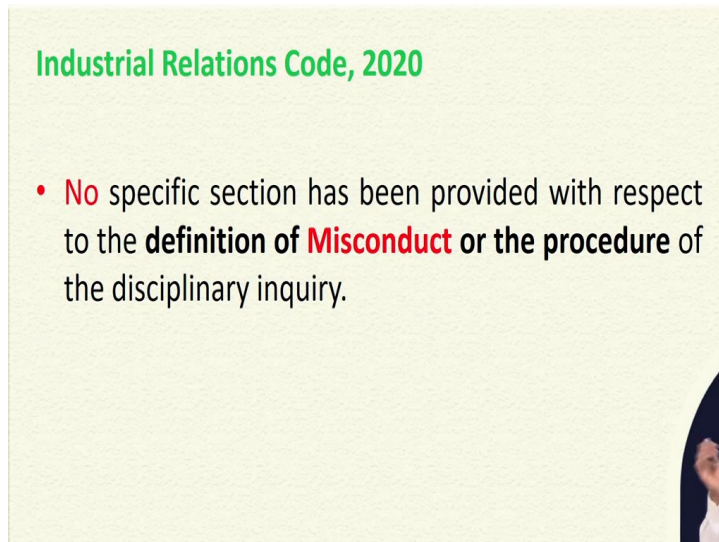


Misconduct & Disciplinary Action
General Principles Derived - IRC, 2020

So, we can say that is very quick. So, these are the provisions which we looked into the Industrial Disputes Act or standing orders. So, earlier in prevailing and we will see what are

these provisions, most of the provisions which we can see have been taken into the Industrial Relations Code as well.

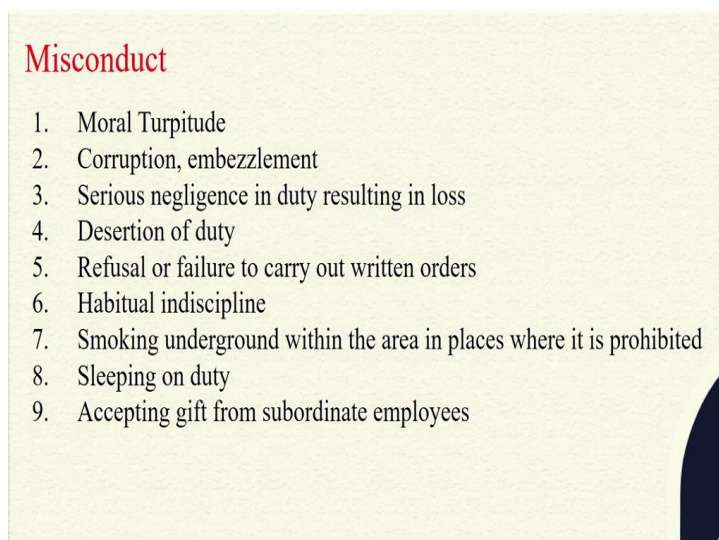
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So, still, there is no specific provision is included in respect of the definition of misconduct. But the instances of misconduct have been included in the IR code as well. So, we are not able to understand why there is no process or procedure laid down in the new code as well for the disciplinary inquiry.

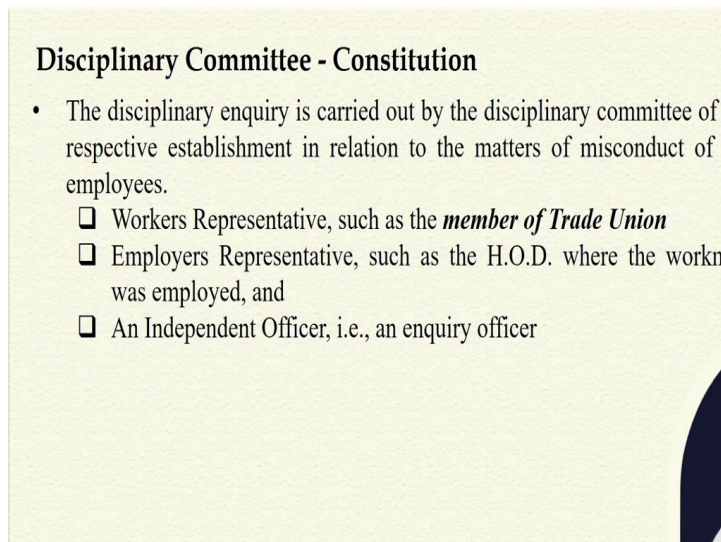
Because the varied enquiry procedures are followed by companies under their standing orders. So, probably the government does not want to codify a uniform set of rules for all inquiry procedures.

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So, here you can see that the misconduct mentioned under the new Act also is in align with the earlier code, the earlier act like moral turpitude, corruption, serious negligence of duty which is causing loss to the employer, desertion of duty, refusal or failure to carry out written orders of the supervisors or superiors, habitual indiscipline, smoking, for example, the case of smoking in mines and place where it is specifically prohibited, sleeping on duty, and accepting a gift from subordinate employees this can also be considered as misconduct.

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Disciplinary Committee - Constitution

- The disciplinary enquiry is carried out by the disciplinary committee of the respective establishment in relation to the matters of misconduct of the employees.
 - ❑ Workers Representative, such as the *member of Trade Union*
 - ❑ Employers Representative, such as the H.O.D. where the workman was employed, and
 - ❑ An Independent Officer, i.e., an enquiry officer

And the disciplinary committee constitution is very important. So, it says that there must be a worker's representative such as a member of the trade union or negotiating union or the negotiating council. Employers representative and there must be an independent officer the enquiry officer must be an independent officer. Thus, we know that in most cases the enquiry officer will be an employee of the employer in some of the cases.

But in very specifically in labour law, it is clearly written that it is an independent officer. The enquiry officer must be an independent officer. So, the employer and the workman can also participate in the committee.

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Principles of Natural Justice

- The management of the industrial establishments **must satisfy the principles of natural justice** while maintaining a **neutral attitude** towards the workmen.
- The delinquent employee must be **informed about the charges** levelled against him and shall be provided with an **opportunity to be heard** so he can refute them and establish his innocence.
- He must be given an **occasion to cross-examine the witnesses** in his defense and evidence at the enquiry should be adduced in **his presence**.

So, in the applicability of principles of natural justice. The supreme court in so many cases has held very clearly that the management, of all industrial establishments, must satisfy the principles of natural justice. And also when conducting disciplinary action when taking disciplinary action, there must be a neutral attitude towards the workman, radically to what extent it rarely happens.

But the courts are consistent on, consistently held that the management or the employees must follow the principles of natural justice, otherwise, the order is going to be stuck down. And most importantly we can see that the charges must be informed to the employee, and what charges levelled against him shall be provided in writing to him.

And an opportunity of being heard should be given and also an opportunity to prove his innocence and refute the charges should be provided to the employee, the alleged employee who is facing disciplinary action. And the most important right is the cross-examination of the witnesses.

Only in the rarest of rare cases the cross-examination is done away with or done it indirectly. Otherwise, cross-examination is one of the important rights and part and parcel of the principles of natural justice. And this cross-examination should be done in his presence. So, that is why I said the only rarest of rare cases the cross-examination is done indirectly. Otherwise, he must be given an opportunity of cross-examination in front of him of all the witnesses.

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Principles of **Natural Justice**

- ❑ In **Union of India vs. T. R. Verma, 1957 AIR 882 (1958 SCR 499)**, the court laid down that the principles of natural justice require the charge-sheeted employee shall have an **opportunity of adducing the relevant evidence** and that the evidence of the employer should be taken in his presence;
- ❑ He should be given the **opportunity of cross-examining** the witnesses examined on behalf of the management

So, the court in Union of India versus T.R. Verma, the court very clearly laid down the principles of natural justice requirement against a charge sheeted employee. So, he must be given an opportunity of adducing evidence. And the evidence of the employer must be taken in his presence.

And then he should be given an opportunity to cross-examining the witnesses examined or produced by the management. So, if the cross-examination opportunity is not given it is a clear violation of the principles of natural justice.

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Principles of **Natural Justice**

- ❑ The punishment awarded, if proven guilty, should be in proportion to the misconduct committed.
- ❑ These principles of natural justice are specified in Sections 2(b), 5(2), 10A (2) and 13A of The Industrial Employment (Standing Orders) Act, 1946.

And the punishment awarded should be proportionate to the misconduct committed. So, what you mean by proportionate punishment, will depend upon the facts and circumstances of the

case. And the court will look into the proportionality of the punishment, which is inflicted on such kind of incidence. So, the principles of natural justice are clearly mentioned to be complied with under the industrial standing orders act and also the repeal provisions in the IR code.

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Appointment of Enquiry Officer

- **Amulya Ratan Mukharjee vs. Eastern Railway, (1962) LLJ-11-540, CalHC**
- It was observed by the Hon'ble High Court of Calcutta that:
- "Before making a charge, the Authorities are entitled to have a preliminary investigation or a "Fact-Finding enquiry" when they receive a complaint from an employer. This is **not considered to be a formal enquiry** at all and in such an enquiry, **no rules are observed**.
- **But the departmental enquiry starts from the charge sheet.**
- The charge sheet must be specific and must set out all the necessary particulars. It is no excuse to say that the delinquent who had knowledge of previous proceedings should be taken to have known all about the charge sheet."

So, here certain judgments are very clear with regard to the appointment of inquiry officers as well. In this particular case the Amulya Ratan Mukharjee versus Eastern Railway, 1962, the Calcutta High Court observed that before making a charge the authorities intended to have a preliminary investigation or a fact-finding inquiry.

When they receive a complaint from the employer a fact-finding inquiry can be conducted. This is not considered as a formal inquiry. So, then no rules can be applicable to this fact-finding inquiry. So, the principles of natural justice need not be followed in the case of fact-finding inquiry, not a formal inquiry.

But a departmental inquiry is starting with giving a charge sheet to the employee. The charge sheet must specify the conducted, and the specific charges not mere allegations or conjecture. It should be mentioned that the misconduct must be clearly mentioned in the charge sheet. So, mere allegations are not sufficient.

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Appointment of Enquiry Officer

- **Saran Motors Pvt. Ltd., New Delhi vs. Vishwanathan, 196411.LLJ139**
- It was observed that: “Enquiry Officer should be **properly and duly authorised by the competent authority to hold a domestic enquiry** into the charges alleged against an employee. Any person, **even an outsider**, may be appointed as an enquiry officer, provided rules or Standing Orders do not bar such an appointment.
- The Enquiry Officer has the obligation **to explain the procedures** of enquiry and charge-sheet against the concerned workman.”

So, in *Saran Motors Private Limited versus Vishwanathan* and we can see that the court observed the role of the enquiry officer. The enquiry officer must be properly and duly authorized by the competent authority to hold the domestic inquiry. It means that the person who is conducting the inquiry must be properly authorized by the employer.

So, any person can be appointed as an enquiry officer in accordance with the standing orders. So, even though there is no provision in the standing orders he can be appointed. So, it is, the standing orders are not going to be a bar to appointing an outsider as an independent inquiry officer. The enquiry officer has at the beginning of the process itself to explain the process or procedures which he is going to follow in a particular enquiry to the workman in the language which he can understand. So, the process and procedures are to be explained to the workman in advance.

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Suspension Pending Enquiry

- When disciplinary proceeding is **pending** or **contemplated**.
- When engaged in the activities **prejudicial to the interest or security of the state**.
- Where a case in respect of **any criminal offence is under investigation, inquiry or trial**.
- Where **continuance** in office **will prejudice investigation/inquiry/trial**.
- When the presence of the employee in office **is likely to affect discipline**.
- When his continuous presence in office is **against the wider public interest**.
- Where a prima face case has been established as a result of criminal or departmental proceedings leading to the **conviction, revival, dismissal**, etc.

So, when the disciplinary proceedings are pending. So, which is found to be prejudicial to the interest of the security of this particular state, or prejudicial to the employer, or in respect of any criminal offences is under investigation, or inquiry, or trial period. And with that continuance of his office, his continuance in the office is prejudicial to such kind of inquiry, investigation, trial, etcetera.

So, that particular employee is going to make or likely to affect the discipline of this establishment or undertaking then wider and also most importantly if the public interest requires that he can be suspended from that particular period of work. And even there in the case of a prima face case is established. Then also and there will be which may lead to a conviction, revival or dismissal then also he can be, he can be suspended during the particular period, so, we said that.

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Subsistence Allowance pending disciplinary proceedings

- Where any worker is **suspended** for complaints or charges of **misconduct** against him,
- **Such investigation or inquiry shall be completed ordinarily within 90 days** from the date of suspension.
- The employer shall pay to such suspended **subsistence allowance** pending investigation or inquiry into complaints or charges of misconduct against such worker.
- The amount of subsistence allowance payable shall be—
 - **50%** of the wages, for the **First 90 days of suspension**; and
 - **75%** of such wages for the **remaining period**

Now, the new Code has put a particular enquiry period. So, any allegation, charges of misconduct. So, the enquiry or investigation has to be completed within a period of 90 days from the date of suspension. Otherwise, so the suspended period the employee or workman is eligible to get subsistence allowance and pending enquiry or investigation.

So, the subsistence allowance has not changed from the standing orders. So, the earlier one the repealed one so is 50 percent of the wages for the first 90 days of suspension and 75 percent of the wages beyond 90 days. So, the suspended employee is eligible to get a subsistence allowance during dependency of inquiry.

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Charge-sheet – Show Cause Notice

- Once the **prima facie case of misconduct is established**, charge sheet is **issued to the employee**.
- Charge sheet is merely a notice of the charge and provides the employee **an opportunity to explain his conduct**. Therefore, charge sheet is generally known as a show cause notice.
- In the charge sheet, **each charge should be clearly specified**.
- There should be a separate charge for each allegation and charge should not relate to any matter which has already been decided upon.
- The charges so framed should be **communicated to the individual** along with the **statement of allegations** on which the charges are based.

So, you can say that if a prima facie misconduct is established or they can conduct a fact-finding inquiry also to find out a prima facie case then a charge sheet must be issued to the employee. A charge sheet is a notice of the charge and asks the employee to explain his conduct. So, the charge sheet is generally known as a show cause notice which is the charge sheet in which the employee is mandatory to have to reply or refute the charges.

So, so you already said that each charge should be specifically and clearly specified. So, there should be separate charges for each allegation and a charge should not relate to the matter which is already decided upon such charges should be communicated to the employee along with a statement of the allegation on which the charges are made. So, there must be a background statement of allegations followed by specific charges to be made in the Show Cause Notice.

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Charge-sheet – Show Cause Notice

- *Sur Enamel and Stamping Works (P) Ltd. vs. Workmen, 1963 SC 1914*
- The Hon'ble Supreme Court, provided that an inquiry **cannot be said to have been properly held unless:**
 - The workman proceeded against must be **informed** clearly of the charges leveled against him
 - The witnesses must be examined **in the presence** of the workman
 - The workman must be given a **fair opportunity to cross-examine** the witnesses **including himself** if he so wishes; and
 - The Enquiry Officer must **record his findings with reasons** in his report.

So, in *Sur Enamel and Stamping Works Private Limited versus the Workmen*, the Supreme Court has said that an inquiry cannot be said to have been properly held unless the workman proceeded and he must be informed clearly of the charges levelled against him.

So, if the workman is using a local language and the enquiry officer is explaining to him in some other language which he cannot understand then the entire process is going to be struck down. And the witness must be examined in the presence of the workman and also the workman must be given a fair opportunity of cross-examination of the witnesses of the employer and the enquiry officer must record the findings with the reasons in his report.

The enquiry officer cannot come to conclusions without evaluating the evidence and also stating the reasons. The enquiry officer must clearly write the reasons for and also the conclusions to come to his conclusions, the reason for his conclusions.

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Show Cause Notice

- ❑ On receipt of the charge sheet, the employee sends his reply to the Authority.
- ❑ If the Authority found the reply to be unsatisfactory, he may get a show-cause notice from the Authority.
- ❑ This procedure is applied in the case of **Associated Cement Co. Ltd vs. Their workmen and Other 1964 65 26 FJR 289 SC.** which further states that:
- ❑ "The workman should be given due intimation of the date on which the inquiry is to be held so that he has an opportunity to prepare his defense at the inquiry."

And on receipt of the charge sheet, the employee must send his reply. So, if the employee authorities found that its reply is unsatisfactory. So, then definitely he will get a Show Cause Notice.

So, you can see that the workman should be given due intimation of the date on which the inquiry is to be held. It means that a notice should be given in advance about the particular sitting of the inquiry officer and a reasonable opportunity being heard to be given to the alleged so-called employee is charged with misconduct to prepare himself for the inquiry, you cannot give, take him to surprise.

So, reasonable opportunity being cured. This is what the court said in, Supreme Court said in the Associated Cement Company case. So, you cannot take any workman to surprise, you should give them an opportunity to prepare his defence in advance.

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Explanation by Employee

- After a charge sheet has been **served** on the accused workman, he may **his explanation cum reply**:
 - **Admitting** the charges and Pleading for mercy.
 - **Denying** the charges in **totality**.
 - **Requesting for more time** to submit the explanation.

Notice of Enquiry

- **Associated Cement Co. Ltd vs The Workmen and another, Supreme Court of India, 1963**
- “The workman should be given **due intimation of the date on which inquiry is to be held so that he has an opportunity to prepare his defence to the inquiry.**”

Record of the Findings

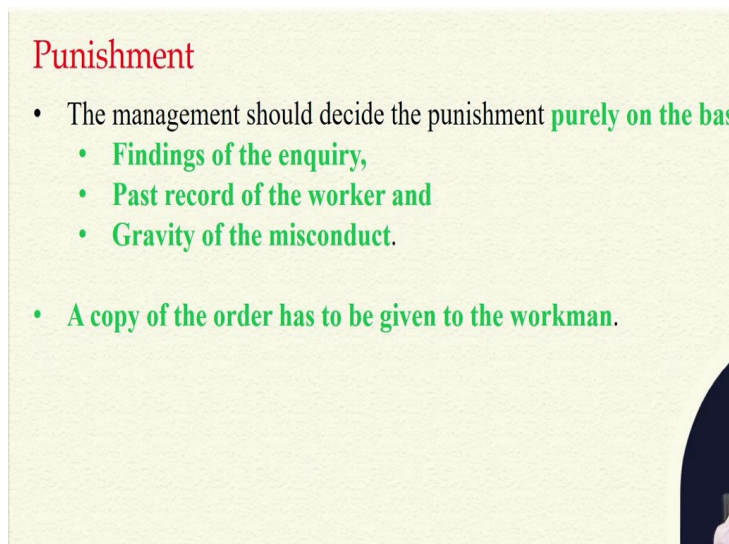
- On the **conclusion** of the **enquiry**, the enquiry officer **must record findings and the reasons** thereof.
- As far as possible, he should **refrain from recommending punishment leave it to the decision of the appropriate authority.**

So, once the charge sheet has been served to the accused workman, he must send his explanation. Either he can admit the charges or he can admit the charges as well as pleading for mercy or he can deny the charges in total and he can request more time to submit an explanation. So, in his reply, he can do all these things.

And as I already said that the intimation, the notice should be given in advance otherwise it is going to be effective against the principles of natural justice. A reasonable opportunity has been given to prepare his defence. And also the enquiry officer must record his findings. And the enquiry officer should refrain from recommending punishment and must leave it to the appropriate authority usually to impose what should be punishment.

He should investigate the matter, enquire into the matter and his conclusions can be written against levelled against the employee against the charges. And he should be refrained from recommending the punishment and the punishment must be inflicted by the appropriate authorities.

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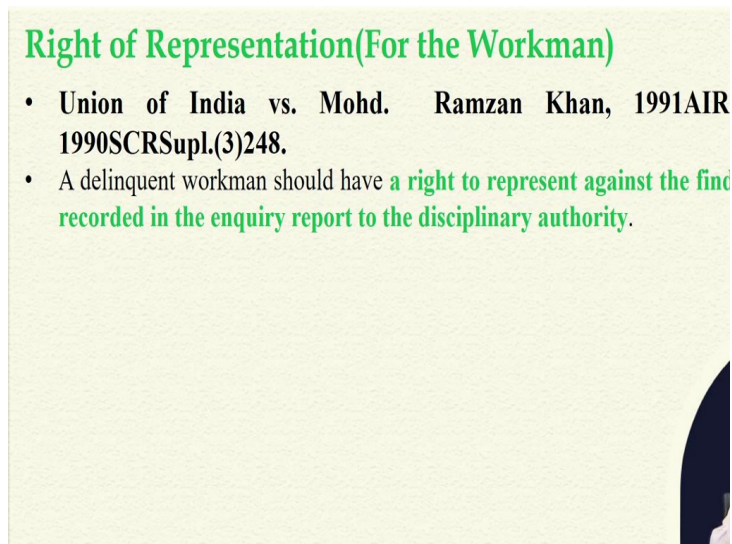


Punishment

- The management should decide the punishment purely on the basis of
 - Findings of the enquiry,
 - Past record of the worker and
 - Gravity of the misconduct.
- A copy of the order has to be given to the workman.

And the management on the basis of the inquiry or findings of the inquiry officer and also the past record of the workman and the gravity of the misconduct impose appropriate penalties on the workman. So, in the report what punishment is to be imposed? It has to be informed to the workman.

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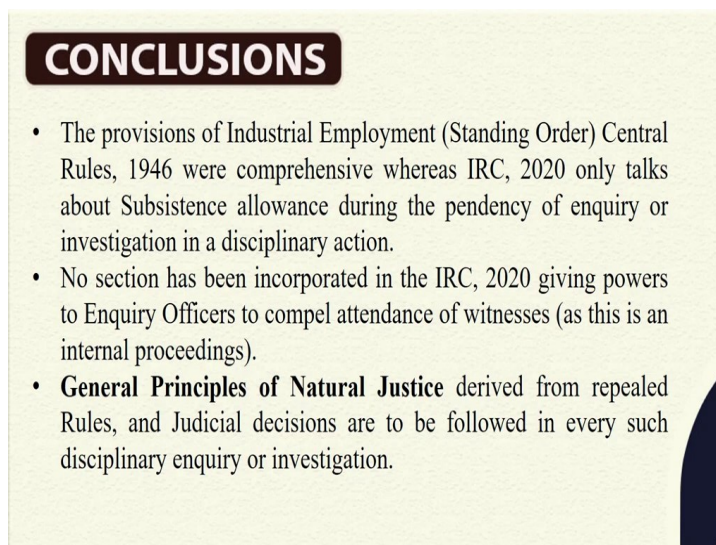


Right of Representation(For the Workman)

- **Union of India vs. Mohd. Ramzan Khan, 1991AIR 1990SCRSupl.(3)248.**
- A delinquent workman should have **a right to represent against the findings recorded in the enquiry report to the disciplinary authority.**

So, it is clear the court said that a workman should be given a right to represent against the findings and record the inquiry report to the disciplinary authority. So, that means once the inquiry officer also submits his report the workman should be given a reasonable opportunity to give a reply to the enquiry report as well to the disciplinary authority before imposing disciplinary actions.

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CONCLUSIONS

- The provisions of Industrial Employment (Standing Order) Central Rules, 1946 were comprehensive whereas IRC, 2020 only talks about Subsistence allowance during the pendency of enquiry or investigation in a disciplinary action.
- No section has been incorporated in the IRC, 2020 giving powers to Enquiry Officers to compel attendance of witnesses (as this is an internal proceedings).
- **General Principles of Natural Justice** derived from repealed Rules, and Judicial decisions are to be followed in every such disciplinary enquiry or investigation.

Once the disciplinary process is complete and after giving the punishment also he should be given an opportunity to give a reply to the punishment inflicted on him. So, here we can see that the inquiry is a complex process, the complex process of deciding whether the employee is going to continue in employment or not to continue in employment.

And we have enough jurisprudence with regard to the proportionality of the punishment as well. So, in government services it depends upon the service rules, service rules also incorporated these basic principles of natural justice. So, if anybody is found to be in misconduct if one of the misconducts is mentioned the employer should issue a notice.

And the notice the employee will give a reply either he will admit or he will deny in total or partially or he can ask that he can completely deny it may not be charged, it may be an explanation. So, if there is a prima facie case is made out in a fact-finding inquiry then the charges can be made.

A notice stating the clear charges will be prepared and given to the employee and ask him to give an explanation. So, the code IR code is very clear with regard to the appointment of an enquiry officer, the inquiry officer must be an independent person. And representatives of the trade unions or negotiating trade unions or negotiating councils are also to be included in the committee and the employer side also is represented.

The employee should be given an opportunity to appear in person before the committee or through any other person. Mostly in disciplinary action, the lawyers are not permitted to appear before if it is under the government services. So, one of his other colleagues can appear on his behalf of him for example the central government service rules prescribe that.

So, the entire process, so it is a statutory process even though there is no specific provision which is relating to conducting disciplinary proceedings mentioned under the IR code or the earlier standing orders but we can see that the entire process is set to process is made through court proceedings or court jurisprudence or through a set of judgments of the courts.

So, this is the usual process which follows in a domestic inquiry or disciplinary action. With regard to the quantum of punishment definitely, there is an appeal that will lie to the courts and appeal will lie to the tribunals and the tribunals can look into the matter and to whether to justify or the proportionality test is used to find out the quantum of punishment.

So, it depends upon the facts and circumstances of each case. So, we can say that when compared to the industrial establishment, industrial employment standing orders central rules or an act the IR code is more comprehensive. So, the IR code very clearly talks about the subsistence allowances during dependency of inquiry, investigation, and disciplinary action. And also the quantum of subsistence allowance also is mentioned.

But again the handicap or lacunae of the court the earlier legislation continued to be in the IR code as well. So, there is no provision, there is no provision in the IR code or powers to be given to the enquiry officer to compel anybody to the attendance of the witnesses or to produce any documents, he cannot compel or ask anybody to come with a particular document to produce a particular document.

So, he does not have the powers of a civil court because all these are considered to be internal proceedings. So, the enquiry officers do not have the powers of a civil court even for the purposes of adducing evidence or making compulsory the attendance of witnesses.

But, the applicability of the general principles of natural justice is very clear through a set of judgments. So, every disciplinary action, every such disciplinary inquiry or investigation follows the general principles of natural justice. So, it is there is more clarity of disciplinary action with regard to the earlier Industrial Employment Standing Orders Act and the IR code. But still, some of the handicaps are continuing with the IR code.

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So, these provisions can be included through these companies and undertakings through the model standing orders and fill this particular lacuna. So, this may improve the working environment and ambience of every industry. And also maintaining is very important to maintain discipline in all undertakings. Thank you.