THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946: KEY ASPECTS

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PREFACE

The Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the ISO) was enacted to require employers in industrial establishments to define with sufficient precision the conditions of employment under them, and to make the said conditions known to workmen employed by them. The ISO not only requires the employers to lay down conditions of service but also requires that the conditions of service must be clearly laid down so that there may not be any confusion or uncertainty in the minds of the workmen, who are required to work in accordance therewith.

It has been observed by the Hon'ble Supreme Court in the report: ***Management, Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.*** **V/s** ***S.S. Railway Workers' Union***, AIR 1969 SC 513, that the object of ISO is to require employers to define with certainty conditions of service in their industrial establishment and to reduce them to writing and to get them compulsorily certified (Section 3 of the ISO), so that unnecessary industrial disputes can be avoided.

The employer of every industrial establishment is required to submit to the Certifying Officer, draft standing orders proposed by him for adoption in his industrial establishment for certification under Section 3 of the ISO. The Certifying Officer is empowered to modify or add to the draft as is necessary to render the draft standing orders certifiable under the ISO. It is important to note that, draft standing orders submitted to the Certifying Officer are to be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which the workmen belong.

As per the provisions of the ISO, the Appropriate Government is to set out model standing orders. The draft standing orders framed by an employer should as far as practicable be in conformity with model standing orders. Any industrial establishment can accept the model standing orders; the model standing orders are temporarily applicable to an industrial establishment which comes under the provisions of the ISO and whose standing orders are not finally certified.

An employer who fails to submit draft standing orders or an employer who does any act in contravention of the standing orders finally certified under the provisions of the ISO shall be punished with fine as specified in Section 13 of the ISO.

According to the Schedule annexed to the ISO, the following matters should be provided for in the standing orders of an industrial establishment:

1. Classification of workmen e.g. whether permanent, temporary, apprentices, probationers, or *badlis*.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
8. Termination of employment, and the notice to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

Section 5 of the ISO:

On receipt of the draft standing order from the employer, the Certifying Officer shall forward a copy of it to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen, in the prescribed form calling for *objections*, if any, which the workmen may desire to make to the draft standing order to be submitted to the Certifying Officer within 15 days from the receipt of the notice.

After giving the employer and the trade union (or representatives of the workmen) an opportunity of being heard, the Certifying Officer shall decide whether or not any modification or addition to the draft standing order submitted by the employer is necessary to render the draft standing order certifiable under the IDA, and shall make an order in writing accordingly. The Certifying Officer shall thereupon certify the draft standing order, after making any modifications and within 7 days send copies of the certified standing order to the employer and to the trade union (or representatives of the workmen).

In the matter of: ***The Rajasthan State Road Transport Corporation* V/s *Krishna Kant***, AIR 1995 SC 1715:

It was held that:

i. It is incorrect to state that on certification of the draft standing orders, the standing orders acquire statutory effect or become part of the statute.
ii. It can certainly *not* be suggested that by virtue of certification, the draft standing orders get metamorphosed into delegated or subordinate legislation.
iii. Though draft standing orders on certification become binding upon both the employer and the employees and constitute the conditions of service of the employees, but it cannot be said that draft standing orders on certification gain statutory force.

In the matter of: ***Rohtak & Hisar District Supply Co. Ltd.* V/s *State of U.P.***, AIR 1966 SC 1471:

It was held that:

i. The Certifying Officer has no jurisdiction to certify standing orders in respect of matters not included in the Schedule to the ISO.

ii. The employer cannot insist upon adding a condition to the standing order which relates to a matter which is *not* included in the Schedule annexed to the ISO.

iii. Provision may be made in the standing order concerning the rights and liabilities of the employer and the employees and their enforcement by an internal arrangement between employer and his employees.

Section 6 of the ISO:

According to Section 6 of the ISO, any employer, workman, trade union or other prescribed representative of the workmen, aggrieved by the order of the Certifying Officer within 30 days from the date on which copies are sent by the Certifying Officer, appeal to the Appellate Authority, and the Appellate Authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications/additions as it thinks necessary to render the standing orders certifiable under the ISO.

The Appellate Authority has to within 7 days of its order under Section 6 (1) of the ISO, send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Section 10 of the ISO:

Section 10 of the ISO deals with the duration and modification of standing orders. Section 10 of the ISO states that, certified standing orders shall not, except on agreement between the employer and the workmen (or trade union), would be liable to be modified until the expiry of 6 months from the date on which the standing orders or the last modifications thereof came into operation.

In the matter of: ***Management, Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.* V/s *S.S. Railway Workers' Union,*** AIR 1969 SC 513, it was held that:

An application for modification of standing orders would ordinarily be made in the following cases:

a. Where a change of circumstances has occurred; or,
b. Where the standing order has resulted in inconvenience, hardship, anomaly etc.; or,
c. Where some fact was lost sight of at the time of certification; or,
d. Where the applicant feels that modification will be more beneficial; and,
e. Once a standing order is modified it can be further modified if new circumstances have arisen since the last modification.

MISCONDUCT AND DOMESTIC ENQUIRY

According to the Schedule annexed to the ISO, the standing orders of an industrial establishment must provide for "*Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct*".
In the matter of: ***Associated Cement Co. Ltd.* V/s *The Workmen & Anr.***, (1964) 3 SCR 652, it was held that:

I. Domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fair play and natural justice must govern the conduct of the enquiry officer.
II. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye-witness of the impugned incident.
III. Domestic enquiries must be conducted honestly and *bona fide* with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities.
IV. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
V. It is desirable that the conduct of domestic enquiries should be left to such officers of the employer who are not likely to import their personal knowledge into the proceedings which they are holding as enquiry officers.

VI. It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him.

VII. It is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him.

VIII. It is not in right spirit that a workman is called on any day without previous intimation and is put to enquiry straightaway. Such a course should ordinarily be avoided in holding domestic enquiries in industrial matters.

IX. The rule that witness should not be disbelieved on the ground of an inconsistency between his statement and another document unless he is given a chance to explain the said document, cannot be treated as a technical rule of evidence, the principle on which this rule is premised is one of natural justice.

In the matter of: ***Tata Oil Mills Co. Ltd.*** **V/s** ***Its Workmen****,* AIR 1965 SC 155, the Hon'ble Supreme Court observed that, findings properly recorded in domestic enquiries which are conducted fairly, cannot be re-examined by industrial adjudication unless the said findings are either perverse, mulish, or are not supported by any evidence. Further, the Hon'ble Supreme Court went on to observe as under:

> "*… But if the enquiry has been fairly conducted, it means that all reasonable opportunity has been given to the employee to prove his case by leading evidence. In such a case, how can the court hold that <u>merely because the witnesses did not appear to give evidence in support of the employee's case, he should be allowed to lead such evidence before the Industrial Tribunal. If this plea is upheld, no domestic enquiry would be effective and in every case, the matter would have to be tried afresh by the Industrial Tribunal</u>. Therefore, we are not prepared to accede to Mr. Menon's argument that the Tribunal was justified in considering the merits of the dispute for itself in the present reference proceedings. Since the enquiry has been fairly conducted, and the findings recorded therein are based on evidence which is believed, there would be no justification for the Industrial Tribunal to consider the same facts for itself. Findings properly recorded at such*

enquiries are binding on the parties, unless, of course, it is known that the said findings are perverse, or are not based on any evidence…" (emphasis supplied)

In the matter of: ***Kusheshwar Dubey* V/s *Bharat Coking Coal Ltd & Ors*,** AIR 1988 SC 2118, it was observed that, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal Court, the employer should stay the domestic enquiry pending the final disposal of the criminal case.

STANDARD OF PROOF IN DEPARTMENTAL PROCEEDINGS

In the matter of: ***Depot Manager, Andhra Pradesh State Road Transport Corporation* V/s *Mohd. Yousuf Miya***, (1996) 9 SCALE 65, it was held that:

1. Criminal prosecution is launched for an offence in violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or of omission of public duty.
2. Departmental enquiry is aimed at maintaining discipline and efficiency in service. Thus, it is often expedient that disciplinary proceedings are conducted and completed as expeditiously as possible. It is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.
3. 'Offence' generally implies infringement of public rights, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law.

4. That strict standard of proof or applicability of the Indian Evidence Act, 1872 stands excluded in departmental proceedings is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and prosecution in a criminal trial is usually left to take its own course.
5. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence required in the departmental enquiry is not regulated by the provisions of the Indian Evidence Act, 1872.

ACCESS TO LEGAL PRACTITIONER

In the matter of: ***Board of Trustees of the Port of Bombay*** **V/s** ***Dilip Kumar Raghavendranath Nadkarni***, AIR 1983 SC 109, it was held that:

If in an enquiry before a domestic tribunal the delinquent employee is pitted against a legally trained person and the delinquent employee is refused the permission to appear through a legal practitioner then such refusal amounts to denial of reasonable opportunity to the delinquent employee to defend his case.

Further, where rules governing a domestic enquiry do not place an embargo on the right of the delinquent employee to be represented by a legal practitioner then the matter would be in the discretion of the enquiry officer whether, considering the nature of the adjudication and the enquiry, the delinquent employee should be afforded a reasonable opportunity to be represented by a legal practitioner.

Also, when an enquiry officer finds that the employer had appointed a legally trained person as the presenting officer, then the enquiry officer must, before the commencement of the

enquiry, enquire from the delinquent employee as to whether he would like to take the assistance of a legal practitioner.

In the matter of: ***Crescent Dyes & Chemicals Ltd.* V/s *Ram Naresh Tripathi***, (1992) 3 SCALE 518, it was held that, the right of a delinquent employee to be represented through counsel or agent in departmental proceedings can be restricted, controlled or regulated by statute, rules, regulations and Standing Orders. The Hon'ble Supreme Court observed as under:

> "*…A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22(ii) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent…*"
> (emphasis supplied)

In the matter of: ***Bharat Petroleum Corporation Ltd.* V/s *Maharashtra General Kamgar Union***, (1999) 1 SCC 626, it was held that, a delinquent employee has no right to be represented by an advocate in the departmental proceedings and that if a right to be represented by a co-workman is given to him, the departmental proceedings would not be bad only for the reason that the assistance of an advocate was not provided to him.

'A delinquent employee has a right to receive the report of the inquiry officer before the disciplinary authority takes a decision regarding his guilt or innocence':

In the matter of: ***Managing Director, ECIL* V/s *B. Karunakar***, AIR 1994 SC 1074, it was held that, denial of a reasonable opportunity to the employee by not furnishing the inquiry report to him before the decision on the charges levelled against him by the employer, is in violation of the principles of natural justice. However, the Hon'ble Supreme Court while observing that the principles of natural justice cannot be given unnatural expansion, held as under:

> "*…When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice…*" (emphasis supplied)

DOCTRINE OF PREJUDICE

In the case of ***Debotosh Pal Choudhury* V/s *Punjab National Bank***, AIR 2002 SC 3276, a regulation governing the respondent establishment required that the disciplinary authority is to forward to the 'inquiry authority' the following documents: copy of the articles of charge and statement of imputations of misconduct or misbehaviour; copy of the written statement of defence, if any, submitted by the officer-employee; list of documents by which and list of witnesses by whom the articles of charge were proposed to be substantiated; copy of the statement of the witnesses, if any; evidence providing the delivery of the articles of charge;

and, copy of the order appointing the Presenting Officer. In view of the above stated regulation, the Hon'ble Supreme Court observed that, the fulfilment of some of the requirements of the above stated regulation are purely procedural in character and unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of the above stated regulation will not vitiate the entire enquiry.