UNIT 14 DISCIPLINE IN ORGANISATIONS

Objectives

The purpose of this Unit is to discuss, familiarise and examine:

- meaning and concept of discipline and its relevance in modern industries,
- what are the various aspects of employee discipline?
- how positive discipline can be achieved from your subordinates.
- the nature and forms of disciplinary issues.

Structure

14.1 INTRODUCTION

Discipline in any organisation is the key of success. Discipline is action or inaction that is regulated to be in accordance with a particular system of governance designed by organisation. Discipline is commonly applied to regulate the human behaviour to its society or environment where they belong. In the business world, discipline is a specific branch of knowledge, learning, or practice and a set of expectations that are required by any governing entity including the self, groups, classes, fields, industries, or societies.

In fact, the main purpose and function of management in an organisation is to keep an organisation going on smoothly, efficiently and profitably. To fulfil these objectives, the peoples of the organisation need to accept certain reasonable set standards of behaviour at the workplace. Effective employee performance depends on the willingness on the

part of the subordinates to carry out the instructions and order of their superiors and to abide by the rules and norms of the organisation.

In the changing business environments, organisations are changing very fastly. These should be managed and carried out in such a manner that the hardship involved may be minimised, and they should not have any demotivating effect on other employees. This could be possible only when such changes are not only essential and fair, but they are made to look to be so. Again, since the enactment of industrial law the right of management to hire and fire has been abridged considerably, as the employee has acquired the right to question and challenge his or her suspension, dismissal and retrenchment. The Labour Courts, High Courts and Supreme Court are vested with the powers to annul or modify such actions of the employer and the latter has now to exercise these rights in a bonafide manner, or for a just cause. In fact, a big case law has already been built up on these changes. It is, therefore, essential for you as a manager or supervisor, to know how such actions should be taken if they have to be taken, with the minimal effect on the working of the organisation and employee-management relations. Moreover, you should also be well aware of grievance handling machinery in your organisation or country of operation.

14.2 MEANING OF DISCIPLINE

The term 'Discipline 'refers to a condition in the organisation wherein employees conduct themselves in accordance with the organisation's rules and standards of acceptable behaviour. This means that members conform to what is considered proper behaviour because they believe it is the right thing to dance, they are made aware of what is expected of them, and assuming that they find these standards or rules to be reasonable, they seek to meet these expectations. Discipline means orderliness, obedience and maintenance of proper subordination among employees and a check or restraint on the liberty of individual. It is a training that corrects moulds and strengthens the individual behaviour. Discipline can also be stated as the management action to enforce the organisation's standards and norms among all the employees. Discipline can also be stated as the management action to enforce the organisation's standards and norms among all the employees. It is also a force, which prompts an individual or group to follow self-discipline i.e. to observe certain rules, regulations and procedures that are considered to be necessary for the attainment of an objective, as a result of training and practice. Discipline implies a state of order in an organisation. It means proper appreciation of the hierarchical superior-subordinate relationship. In other words, adherence to established norms and regulations in an organisation for smooth running and functioning of the organisations towards achievement of organisations, goal. It corrects improper conduct and thus acts as a force leading to the observance of rules and regulations.

Undoubtedly, Discipline implies a state of order in an organisation but it essentially relates with an attitude of the mind, moral, values, ethics, culture and environment of individual. Therefore, discipline cannot be maintained merely with the help of legislative sanctions; it requires persuasion on a moral plane. The concept of discipline emerges from the interaction of the seniors with the subordinates. And these interactions with the subordinates are governed by various formal and informal rules and regulations. The company's manual or standing orders provide the formal rules and regulations, including work-related behaviour rules. But these formal rules are not sufficient to

cover the wide range of interaction that the seniors and the subordinates are engaged in the complex context of organisational relations. A large part of the behaviour and interaction with the subordinates is governed by informal and unwritten rules and norms. These informal rules and norm that support and legitimise practice are based on convention and culture of the organisation.

14.3 OBJECTIVES & IMPORTANCE OF DISCIPLINE IN ORGANISATION

The basic objectives of discipline are to maintain cordial relationship by establishing conduct, rules and regulations within the organisation. There must be rules of behaviour for staff which must be accepted by workers, particularly in the area of punctuality and absence. It is therefore a code of discipline must be drawn up and agreed with the workers and written into their service contracts. New recruits must be made aware of the code and the requirement for them to comply. The surest way to achieve and maintain good staff discipline is to ensure a high morale, which is, after all, one of the marks of good management. See Fig. No. 1.Discipline is concerned with setting standards of performance, attitude and behaviour at work-place in the interest of ensuring that everyone knows what is expected of him and he conforms to them.

Discipline and counselling are designed to correct problems which can be associated with lack of effort, poor performance, misconduct, and the inability to reach organisational and individual goals. If these problems are permitted to manifest to the point of termination, then both the employee and the employer lose. In addition to the 'emotional scars' discipline or discharge may cause for the employee; the organisation is losing a once-valued employee. That individual was chosen after a careful recruiting and selection process. Getting to this point did not occur cost-free. In fact, every time an employee is terminated the organisation is, in essence, eliminating any further 'return on its investment' for the employee.

To ensure that an organisation runs smoothly there must be staff discipline. How-ever, an autocratic management style is not acceptable today. So, this is a difficult task. No longer will workers tolerate fines or similar pecuniary penalties for what the organisation sees as departure from acceptable behaviour.

When problems occur the manager's first task is to get the individual concerned back-performing or behaving adequately and effectively. Normally, this is to be achieved by having a quiet word with the individual, pointing out to him where his behaviour or activity is falling short of the required standard, ensuring that he knows what the required standard is and concluding the discussion with an agreement that this is now the way in which matters will be conducted. If this fails to work, various other procedures will have to be invoked. The basic objective is to remove the cause of the problem. And any and every warning issued by the manager or the organisation in the pursuit of a resolution of the problems will furnish detail in clear terms of the nature of it, the steps taken to try and resolve it and the levels of performance now expected of the individual.

14.4 DISCIPLINARY ISSUES

Disciplinary issues arise when there is non-conformity to formal and informal rules and regulations of the organisation. No management can afford indiscipline as it will affect

the morale, involvement and motivation of subordinates in the organisation. Indiscipline often leads to chaos, confusion, and reduces the efficiency of the organisation.

Various socio-economic and cultural factors play a role in creating indiscipline in an organisation. We wonder if you realise the fact that often indiscipline may arise because of Employees' Grievance, poor management on the manager's part. Insensitive and thoughtless words and deeds from Handling a manager are potent reasons for subordinates to resort to acts of indiscipline. Defective communication by the superiors and ineffective leadership devoid of tactful human relations approach can cause indiscipline among subordinates. Indiscipline by the subordinate may be an outcome of the manager's non-response to his or her grievance also. The subordinates may indulge in acts of indiscipline because of unfair practices, like the wage differentials, unreasonable declaration of payment of bonus or non-payment, wrong work assignments, defective grievance handling etc. The payment of low wages is perhaps another reason for indiscipline. When the employee is paid low wages and in addition more and more work is demanded he or she becomes dissatisfied, dishonest and insubordinate. Poverty, frustration and indebtedness, generally overshadow the mind and thought which move more towards destruction than constructive discipline. Low payment of wages also creates lack of motivation in the employees. After all, each individual needs response, security, recognition and new experience. An employee agrees to give a certain amount of work and loyalty, and expects at the same time, in return, an adequate economic reward, security, fair human treatment and other kinds of support. If he or she does not get as expected, then gradually the employee begins to express his or her dissatisfaction and grievance by way of absenting oneself, coming late to the office, inefficiency and insubordination. Defective communication between the manager/supervisor and the subordinate also leads to conflict of various kinds. Very often the subordinates get no opportunity to express their feelings and sentiments. Unless a humane and understanding approach is adopted there is more likelihood that the subordinate may take recourse to indiscipline. So, we can say that counselling is very essentially required to understand the root cause of indiscipline, and to find a solution for it.

14.5 FORMS OF INDISCIPLINE

There are various forms of Indiscipline such as, absenteeism, insubordination, violation of rules, gambling, incompetence, damage to machine and property, dishonesty and other forms of disloyalty lead to industrial indiscipline. These are all forms of 'misconduct' against the management. Misconduct means "improper behaviour, intentional wrong doing, or deliberate violation of rule of standard behaviour." If an act of an employee is prejudicial or likely to be prejudicial to the interests of the employer or to the employer's reputation, it is misconduct. Any conduct on the part of an employee inconsistent with the faithful discharge of his duties towards his employer would be treated as an act of misconduct. The act of an employee can become misconduct in the following cases:

- Where the act of employee is inconsistent with the peaceful discharge of his or her duty towards the employer;
- Where the act of the employee makes it unsafe for the employer to retain him or her in service;
- Where the act of the employee is so grossly immoral that all reasonable persons would not trust the employee;

- where the conduct of the employee is such as to open before him or her ways for not discharging the assigned duties properly;
- where the conduct of the employee is such that the employer cannot rely on his or her loyalty/faithfulness;
- where the conduct of the employee is insulting and insubordinate to such a degree as to be uncomfortable with the continuance of a superior-subordinate relationship;
- where the employee is abusive or disturbs the peace at the place of his or her employment; and
- Where the employee is habitually negligent in respect of the duties for which he or she is engaged.

It is very difficult to lay down exhaustively as to what would constitute misconduct and indiscipline. It would depend upon the examination of facts. Some of the acts of misconduct are mentioned in the Model Standing Orders as a part of the rules made under the Industrial Employment (Standing Orders) Act of 1946 now under Industrial Relations Code-2020. Non-performance of duty is a serious misconduct, because it is basically inconsistent with the obligations of employment. Under the act of negligence, an employee fails to give full care and attention on account of which the work becomes defective, and production suffers both in quantity and quality. It is a misconduct to cause disorder on the premises, intimidate, threaten or assault other employees and use abusive language. Preventing the entry and exit of willing employees and movement of goods to and from the factory, obstructing the work being carried on, damaging the property of the employer, indulging in mischief or other objectionable activities, occupying the employer's premises or property, go slow, etc. are forms of misconduct. Insubordination, assault or threat to superior officers, defamation or making false complaint, are all acts of indiscipline. Non-performance of work during working office hours, tampering with official records or misappropriation of accounts are acts of indiscipline which are considered to be of serious gravity.

14.6 DISCIPLINARY ACTIONS

For every misconduct and act of indiscipline, a manager will have to take disciplinary action against the concerned employee. However, there is no hard and fast rule to deal with indiscipline. The positive approach to discipline which we have discussed in an earlier Section calls for self-discipline. This approach assumes that most of the subordinates, if not all, generally behave reasonably following the given norms and procedures. To institute this kind of positive discipline among the subordinates the manager must ensure that:

- Rules and regulations are reasonable, legitimate and clear.
- Subordinates are involved in framing rules and regulations so that they willingly accept them.
- Prior and clear notice is given of the consequences of breaking rules.
- There is consistency and uniformity of punishment.
- Human personality is treated with dignity.

- He or she, as a manager, should set high standards.

In an organisation, different types of disciplinary actions can be taken:

(i) Preventive Discipline: The institution of self-discipline can be referred to a as the actions taken are prior to any indiscipline on the part of the employee(s). And it initiates self-discipline as a preventive measure to indiscipline.

(ii) Corrective Discipline: In this case, the employee is let off with some sort of corrective disciplinary action in response to some indiscipline. The action can be a warning, suspension, etc. Usually the action is taken by the immediate supervisor but the authority is given by the higher level manager.-The corrective action is a positive action initiated to encourage the employee discipline by reforming the indisciplined employee and also ensuing no further similar indiscipline from the co-worker. Thus, ensuing effective group standards.

(iii) The " Red-Hot- Stove Rule: It's an extension of the corrective action. It means that the indisciplinary action demands a reaction like a person receives in touching a hot stove. The corrective action should be very impersonal but immediate and stem with a consistency. But first warning is to be issued so that every employee is aware of the consequences. As the disciplinary action is immediate the employee(s), register the punishment and the offence. Moreover, the corrective action has to be consistent so that no feeling of discrimination is generated among the employees.

(iv) Progressive Discipline: Progressive discipline here refers to the fact that repeated. Disciplinary Issues and offences will warrant severe/stronger punishments. This is to encourage the Employees' Grievance employees to implement self corrective actions so as to save themselves from any Handling further penalties. This process allows the organisation a chance to work out the employee problem. The following process can briefly be summed up as Progressive Discipline System (K. Davies 1981) : - verbal reprimand by Supervisor, written reprimand with a record in personnel file, one to three day suspension from work, suspension for one week or longer, and discharge from work. In addition, you can check indiscipline through counselling and educating your subordinates. Strategies like job enrichment to increase commitment among your subordinates, effective and efficient grievance handling procedures, opportunities for development of subordinate's potential are strategies that you may adopt to prevent indiscipline in your organisation. In order to maintain the motivation and morale of your subordinates, it is necessary that you adopt a formal system of dealing with indiscipline. The formal system often calls for a judicious approach.

14.7 CHARGE SHEET

Charge Sheet means a written statement of certain allegations upon the offender to communicate that what is done is lawbreaking and not acceptable as per the code of conduct. The objectives of Charge sheet are highlight and address the exact Point of misconduct committed by the employee and demanding to submit an explanation in his / her defence and to present it to the management of the organization. It is important to

note that the Change Sheet format should also include the particular time, date, place and the occurrences and the way the incident took place.

In other word, Charge sheet is the letter claiming the reasons regarding misconduct or any other unprofessional behaviour of the employee in the organization. The employee needs to give clarification regarding the act for which charge sheet is given to him.

Charge sheet is the documents that issued to an employee when an employee is involved in any type of misconduct or bad behaviour with the office colleagues or if the employee is involved in theft of the company's property or if he/she is absent from his duties or if he/she is not performing well. Charge sheet is issued to the employee in above mentioned cases for which he has to give an explanation for the charges which are imposed against him and if the employee neglects the charge sheet, then a serious action is taken against him which can result in employment termination from the organization.

Charge Sheet is not an accusation made or information given in abstract but an accusation made against a person in respect an act committed or omitted in violation. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. The employer cannot justify his action on any grounds other than those contained in the charge sheet. The charge sheet, however, is not expected to be a record of evidence. The person signing the charge sheet is not an accuser. He does not make himself responsible for the truth of the facts set out in charge sheet. He merely tells the accused what he is supposed to have done (Bennet Coleman & Co. LAC p.2 1956) The charge sheet must clearly set forth the charge and ask the delinquent to submit his explanation within a reasonable time, i.e. within 24 or 48 hours depending on the gravity of the misconduct. The charge sheet should mention the misconduct committed, the date and time of its commission and the relevant section of the Standing orders under which the misconduct falls. There may, however, be a situation where an employee may commit an act of misconduct which does not fall under the list of misconducts mentioned in the standing orders

There is a model Proforma of Charge Sheet in the following Box.

Model Pro - Forma for General Charge Sheet

Sample Format

Date———————-

To

Mr./Ms._____

We have received a report against you that on the date_____ at_____ time you were involved in misconduct. The acts mentioned above have been done by you as per the report and if it is proved strict action will be taken against you.

Accordingly, you have to give a proper explanation for the misconduct you are required to give explanation within ……. days otherwise action will be taken by the management.

If you fail to submit your explanation as required, it will be assumed that the charges are genuine and suitable action will be taken against you.

The charges against you, are serious, hence you will be suspended till further action.

Please acknowledge the receipt of the letter.

Authorized Signatory

14.8 DOMESTIC ENQUIRY

The term 'domestic enquiry' is mainly used to refer to an enquiry into the charges of indiscipline and misconduct by an employee. In common parlance, domestic enquiry means departmental enquiry or domestic tribunal. In such enquiries, the matter is decided by administrative officers and not by courts of law. In cases of alleged indiscipline, it is common for disciplinary authorities in a department or in an industry to appoint an officer or officers to inquire into the allegations against an employee. These enquiries are commonly known as 'Domestic Enquiries'.

Domestic enquiry is similar to a trial in a court of law, but while a trial in a court is for crimes done against society, domestic enquiry is conducted for offences committed against the establishment for misconduct, punishable under the standing orders/rules and regulations of the organization. Further, while a trail in a court is in accordance with the criminal procedure code, civil procedure code, evidence act, the domestic enquiry is conducted in terms of what is known as 'Natural Justice'. Also, the enquiry officer while examining the evidence and pronouncing on the guilt is not authorized to penalize the employee. It is only the employer or the appointing authority also known as notified disciplinary authority who can pronounce the penalty. Domestic enquiry is not considered as a legal requirement under the Industrial Disputes Act, or other substantive laws such as the Factories act, Mines Act, etc. but has been provided under the standing orders to be framed in the Industrial Employment (Standing Order Act) 1946 which is merged under the Industrial Relations Code-2020. As a result, it is now well-established that such standing orders have the force of law and constitute statutory terms of employment. The case law established over a long period has made it obligatory for the employers to hold a fair and just enquiry to prove the misconduct before awarding any serious punishment. Dismissal of an employee without holding a fair and just domestic enquiry amounts to the violation of the principles of natural justice and is frowned upon by the Labour Courts/Industrial Tribunals and adverse conclusions may be drawn against the employer not holding a domestic enquiry, in so much so that the dismissal without holding a domestic enquiry is deemed to be illegal.

Principles of Domestic Enquiry

Certain basic principles of domestic enquiry are as under:

- Rule of Natural Justice must be observed.
- The delinquent is entitled to a just hearing.
- He can call for his own evidence.
- Cross-examine any witness called by the prosecution.
- Where rules are laid down, the procedure of such rules must be followed.
- Disclose to the employee concerned, the documents of records and offer him an opportunity to deal with it.
- Do not examine any witness in the absence of the employee.
- The enquiry officer is at liberty to disallow any evidence after recording the reasons in writing.

Process of Domestic Enquiry

When the management comes to know that a particular act of misconduct has been committed by an employee, they should hold a preliminary enquiry into the matter.

Such an enquiry may be termed as Fact-Finding Enquiry. The delinquent may also be interrogated during the enquiry. The object is to arrive at a conclusion whether a prima facie case exists for taking disciplinary action against the workman concerned. In the preliminary enquiry, if the management is satisfied that an act of misconduct has been committed which would necessitate taking some disciplinary action against the employee concerned, and then the charge sheet will be issued.

Enquiry means: (a) Hearing of the Case (b) Recording Evidence (c) Admitting Documents (d) General completion of the records upon which a finding would be based Evidence. Evidence in legal sense consists principally of oral testimony or witnesses, written documents and various other subjects perceptible by the senses. Proof is the process of adducing evidence before a judicial body. The purpose of the proof is to aid the tribunal in finding the facts.

Important Aspects of Evidence : The correct method of appreciating and assessing the evidence of a witness is by scrutinizing the evidence on its merits and it is only when a doubt arises whether the witness is in fact deposing to the truth or not, that the necessity would arise to investigate into the possible reasons for his conduct and what would have motivated the same, such as intimate interest in the person on whose behalf he had come to give evidence, or strong enmity against whom he had come to give evidence. Demeanour, Veracity, Enmity, Bias, Low standard, previous conviction, Doubtful character. Sometimes the evidence may suffer because of:

(a) Lapse of memory

(b) Of inability to observe minutely

(c) Recount and recite correctly Conducting the Enquiry When a person of authority or one who is competent to take disciplinary action gets a complaint, it is left to him to make such investigation of Preliminary Enquiry as he considers it fit together the information and find out the truth of the complaint and the evidence available in support of it.

During such preliminary enquiry the person making the investigation need not follow any rules and regulations or principles of natural justice. Even the person against whom charges are going to be framed may be questioned during the process of preliminary enquiry. Before framing the charges the disciplinary authorities occasionally make a preliminary investigation or fact finding enquiry with a view to satisfy themselves whether any disciplinary action against the workmen should be launched or not. Such investigations are termed as preliminary enquiries. In such investigations there may be ex-parte examination and ex-parte reports. The depositions of the witnesses in such investigations, if any, or the reports in the investigations are meant merely for ascertaining whether there is any prima facie case justifying disciplinary proceedings. (Fire Stone Tyres Vs. their Workmen 1967 II ILJ 715 SC)

Purpose of Preliminary Enquiry: Sometimes allegations against persons are made in a frivolous, reckless and prejudiced manner. A preliminary analysis may well throw light on the allegations and help the authority concerned to know if there is a prima facie case and there are good reasons to frame charges against the person. It would be wrong to pre-determine the guilt of the person in a preliminary enquiry however strong the evidence gathered during the preliminary enquiry may be. Such evidence could only help the authority to frame charges against whom certain allegations have been made. Preliminary enquiries are held as for as possible orally and only the person making the enquiry records it in writing. Enquiry Proceedings Before embarking on an

enquiry, the management should be sure that a specific misconduct exists and that it is not ambiguous about the facts of the misconduct. Attempting disciplinary action, with extreme punishment on flimsy grounds and undependable witnesses, is dangerous. If it is not sure of the facts of the case from the evidence available, it will be better to take a lenient view and let off the workman with a warning. Where the explanation of the employee is not satisfactory and the management is sure of its case, a letter has to be sent to the delinquent stating that it has been decided to hold an enquiry into the charges on a particular date, time and place.

In the same letter the following may be added. 'At the enquiry you will be given full opportunity to conduct your defence by examining your witnesses and cross examining the witnesses against you. Should you fail to be present for the enquiry as advised, the enquiry will be held ex-parte.' An enquiry may be held for an employee individually or for several employees where acts of misconduct charged relate to several employees and the charge is common. It is better that the proceedings of the enquiry are recorded by the enquiry officer in his own handwriting. The delinquent should be asked if he understood the charges levelled against him. If the delinquent refuses, the charges be further explained to him, the enquiry officer should oblige him. The delinquent should also be asked to accept the charge. If he accepts the charge the matter normally ends there. But if he pleads not guilty the enquiry proceedings start in right earnest. If the standing orders provide for giving assistance to the workman at the time of the enquiry either by allowing a union office bearer or a co-worker, a question should be put to the delinquent asking him whether he desires to avail the opportunity and the same should be recorded. If he says yes, such assistance should be allowed. There is no rigid pattern in which an enquiry should be preceded in examining the witnesses. But the normal pattern is that the evidence in respect of the charge is heard first one by one. Each of these witnesses would then be subject to cross- examination by the delinquent. When this is over, the delinquent should be asked if he has witnesses to give the evidence which would be subject to cross examination by the management representative, if present. In cases where management has only one witness in support of the charge, the same person may go ahead with the cross-examination. But if reliance is made on more than one witness, it is better that the management appoints a representative to do the cross-examination. If the delinquent cites witnesses who are his fellow employees, arrangement should be made by enquiry officer to procure them. If the witnesses cited are outsiders over whom the employer has no control, it is the responsibility of the delinquent alone to present them at the enquiry. Care should be taken to see that all the witnesses are examined in the presence of the delinquent. Adjournments requested by the delinquent on reasonable grounds should be granted. Hastening the enquiry, disregarding the formalities to be observed will vitiate the enquiry. Signature of the person giving evidence should be obtained in every page where the evidence is recorded and also at the conclusion of the evidence. The enquiry officer, the management representative, the delinquent and his co-worker should sign the proceedings in all the pages.

Role of the Enquiry Officer : An Enquiry Officer is an agent of the Disciplinary Authority on a fact finding mission. He is more or less like a judge or what may be called, "Quasi Judicial Tribunal". He is expected to conduct the enquiry in an impartial, unbiased, fair way with open mind. He should not take the role of the Presenting Officer or Defence Representative. He need not follow rules or procedures of Courts or apply the provisions of Evidence Act or any other law. If the delinquent employee objects to the enquiry officer conducting the enquiry on the ground that the enquiry

officer has a prejudice or bias against him, the enquiry officer should refer the matter to the disciplinary authority, before conducting the enquiry. The enquiry officer should elicit information on all material points. Wherein an enquiry, a witness gives evidence on material points to corroborate the testimony of complainant about his hearing the conversation between the complainant and the delinquent worker, it is essential that the distance between the witness and the place of occurrence is also ascertained to find out if the witness could have really heard it. Even if this point is not brought out by the respective parties at the enquiry, the enquiry officer will have to bring out this point. The Enquiry Officer should be considerate and he should not cross-examine and put leading questions. The questions asked by him should not give an impression that he is acting in a partial manner. He is entitled to ask for any clarification on the evidence tendered but this should be done in a way that any inference of partiality is not revealed. He should not normally ask questions resembling cross-examination. Where the question of victimisation is alleged by the delinquent for his being a member of the minority/ unrecognized union that the case was foisted against him at the instance of the majority / recognised union, the enquiry officer should not brush aside the suggestion by saying that he is not interested in union politics, but should be stow efforts to find out the necessity for such plea being allowed and take a decision. If the employee against whom the enquiry is held misbehaves with the enquiry officer or with the witnesses or with any other person present during the enquiry or does any act hindering the smooth conduct of the enquiry such fact shall be recorded by the enquiry officer. If the employee against whom the enquiry is held leaves the enquiry during the conduct of the proceedings without the permission of the enquiry officer, the enquiry officer may at his discretion, proceed with the enquiry without the employee being present after recording such fact.

Functions of Enquiry Officer: An Enquiry Officer should complete the enquiry and submit his findings to the Disciplinary Authority as expeditiously as possible. To this end he should:

(a) Advise the date of the first hearing to the employee. He may also advise about the list of documents and witnesses to be relied upon by the prosecution and forward copies of the documents which would be received by him from the Presenting Officer.

(b) Following are the persons allowed in an enquiry proceeding:

   i. Delinquent employee

   ii. Presenting Officer

   iii. Defence Representative if any

   iv. Only one witness, at a time who is being examined

(c) Ensure that the employee is present during all sittings of the enquiry. Without his presence, enquiry should not be conducted.

(d) At the enquiry, ensure identity of the employee and ascertain basic details about him, such as name, age, etc.

(e) Ask the employee whether he has received the charge sheet quoting the charge sheet number and date.

(f) Read out the charges one by one and ask him whether he admits the charge. If the employee pleads guilty for a charge proceed to the next charge. If he

does not plead guilty to the charges, ask him if he is going to be represented by any defence representative. If so, obtain letter from the employee appointing defence representative.

(g) Ensure that the defence representative is no one other than a representative of a registered union, or with the permission of the Disciplinary Authority, a lawyer. The defence representative need not necessarily be a representative of the recognised union. If the employee wishes to engage a lawyer, the matter should be referred to the Disciplinary Authority and further proceedings should be held only on receipt of his advices.

(h) Advise the Presenting Officer to present his case and then to start examination-in-chief of his witnesses. Immediately after examination-in-chief of each witness is over, allow the witness to be cross-examined by the Defence Representative and to be re-examined by the Presenting Officer after the cross-examination is over.

(i) Then ask the Defence Representative to conduct examination in-chief of the defence witnesses also and then follow a similar procedure as above.

(j) After each witness has been disposed of obtain the signatures of all present, in the recorded note book on each page. The witness should also sign before he leaves the room.

(k) After all the witnesses of the prosecution and defence have been examined on the last day of the sitting; the Presenting Officer may be advised to present his summing up followed by the Defence Representative. If they so desire, they may be allowed to submit written brief. In that case, advise Presenting Officer to submit one copy of his brief to the defence Representative.

(l) Advise the Defence Representative that on receipt of Presenting Officer's brief, he should submit his brief.

(m) On receipt of Defence Representative's brief, prepare the findings and submit it to the Disciplinary Authority.

Enquiry Findings

The Enquiry Officer should narrate briefly the statement made and the evidence laid before him both in support of and against the charge. He should analyse each charge as to whether it is proved or not. The findings should not suggest any punishment. They should be supported by cogent reasons to be set out clearly in the report. The Charge Sheet, Explanation, and Record of Enquiry and the findings of the Enquiry Officer will have to be submitted to the Disciplinary Authority, for decision. The decision and punishment, if any, shall be communicated in writing to the employee concerned as early as possible.

14.9 AWARDING OF PUNISHMENT BY DISCIPLINARY AUTHORITY

On receipt of the proceedings and findings of the Enquiry Officer, the Disciplinary Authority should forward a copy of the findings of the Enquiry Officer to the delinquent employee and advise him to submit his comments on the findings of the Enquiry Officer within a specific period of time. On receipt delinquent employee's comments or after

expiry of specific period of time given to delinquent employee to submit his comments, the Disciplinary Authority should come to his own conclusion by going through all the papers and applying his mind dispassionately. He should also record his views on the Enquiry Officer's findings in respect of each charge separately.

14.10 SHOW CAUSE NOTICE

After deciding the punishment for the misconduct proved against the employee the Disciplinary Authority should issue a show cause notice furnishing his order and proposing the punishment and advising the employee to show cause why such a punishment should not be awarded to him.

Consideration of the Past Record: The Disciplinary Authority should also go into the past record of the employee while awarding the punishment. When it is favourable to the employee and the misconduct committed by and approved against him is of a minor nature, the Disciplinary Authority may take a lenient view. In case of adverse past record, it should be disclosed to him (employee) in the show cause notice and he should be given an opportunity to explain the same. The past record is relevant only for the purpose of awarding punishment and not for finding whether the employee is guilty or not of the charge. After considering all the above factors, and after affording a personal hearing to the employee, the Disciplinary Authority will issue the final order reducing or confirming the punishment already proposed or exonerating the employee, as he may deem fit.

Appeal:

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

Activity 1

Explain in your own words how to handle discipline in organisations citing examples.

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14.11 SUSPENSION

Suspension means prohibiting an employee from performing the duties assigned to him or her and withholding wages for so long as that prohibition continues. During the period of such prohibition the contract of employment between an employer and the employee is said to be under suspension, and the employee is said to have been

suspended. In other words, suspension does not mean termination of service but only denial of work for some time, with or without pay, whatever the contract between the employee and employer permits. **Procedural suspension** is not considered as a punishment. Such suspension is made when disciplinary action is initiated or is about to be initiated against a person for any misconduct which may warrant any major penalty like discharge or dismissal. The delinquent employee is suspended if his or her presence at work is not considered desirable for fear of any tampering with the records or any other evidence or the enquiry by itself. The employee is also suspended in the interest of discipline and good order in the establishment and in all cases where the act of misconduct complained of is grave and serious. It is usual to issue the suspension order along with the letter of charge, but if the management thinks it necessary, the employee may be suspended even before issuing the charge-sheet pending further disciplinary proceedings.

During the period of suspension, the worker is paid a subsistence allowance equal to one half of the gross wages for the first ninety days and three-fourths of the wages beyond ninety days. Till recently this subsistence allowance was being paid only in the Government and public sector establishments, but with the recent amendment of the rules it has been made obligatory for all employers to pay to the employee during his or her suspension, a subsistence allowance equal to one-half of the basic wage, dearness allowance and other compensatory allowances to which he or she would have been entitled if one had not been suspended. Such subsistence allowance is paid for ninety days. If the enquiry is prolonged beyond ninety days, the allowance is to be increased to three-fourths of his or her normal emoluments. If, however, the responsibility of prolongation is that of the employee the allowance would be reduced to one-fourth of his or her normal emoluments.

14.12 DISMISSAL AND DISCHARGE

Dismissal means termination of service or contract as a punishment for a serious misconduct or act of indiscipline. This is the supreme punishment which an employer can give for disciplining employees as a last resort. It carries a stigma which may prevent the dismissed person from getting another job. It is a permanent separation from job. Dismissal and discharge have the same result, that is, termination of the service of the employee. These terms are often used indiscriminately and interchangeably by the employers and employees. But there is a distinct difference between the two expressions, and it is desirable that this is clearly understood. The points that need to be noted in this connection are as follows:

(a) While dismissal is a punishment for some misconduct, discharge is not always a punishment.

(b) The act and omissions for which the punishment of discharge may be inflicted are generally the same for which the extreme punishment of dismissal would be warranted. However, on consideration of equity, expediency or extenuating circumstances, it may be deemed desirable by the employer to discharge an employee instead of dismissing him or her.

(c) Discharge is considered a less severe punishment than that of dismissal, although 'both result in the termination of service. The stigma that is attached to the expression 'dismissal' may make it practically impossible for the person concerned to obtain another employment, which is not the case with discharge.

(d) The agreed or reasonable notice may have to be given in case of discharge, but not so in case of dismissal which is usually summary, i.e., without notice.

(e) In case of dismissal, the employer can withhold the organisation's contribution to the provident fund, bonus and gratuity payable to the employee and also his or her other dues to make up the loss caused to the concern by his or her misconduct, but in the case of discharge the employee concerned would usually be entitled to these benefits and dues.

(f) For dismissing an employee, the employer has to hold disciplinary proceedings. He or she may or may not do so for discharging an employee.

The employer can discharge an employee by giving an agreed or reasonable notice, as provided in the standing orders or contract of service, without serving him or her with a charge sheet, receiving explanation and holding an enquiry, as is usually done for dismissing an employee. However, the employer may be required to prove the bonafides of both the actions.

Grounds for Dismissals

The grounds for dismissals can be: incapacity of the employee which prevents him or her from fulfilling the contract of service with the employer. The incapacity can be lack of skill, technique, aptitude or physical health. misconduct or various offences which are inconsistent or incompatible with the faithful discharge of one's duties. Wilful insubordination, riotous and disorderly behaviour, dishonesty, habitual absence without leave, habitual negligence or wilful neglect of work etc., would be justifiable grounds for dismissal. Such immorality on the employee's part which may bring disrepute to the employer. These acts can be that of theft, fraud, dishonesty such as giving or taking bribe, habitual breach of' law such as drunk driving by a company driver and so on. All the above three grounds justify dismissal under common law, and to this may be added several other acts and omissions, such as wilful slow down, or inciting others to slow down, assault on manager or supervisors, and other offences under the Indian Penal Disciplinary Issues and Code involving moral turpitude, taking into consideration the nature of the industry or Employees' Grievance of the establishment. However, one has to follow a procedure in this regard. The procedure Handling for stipulates the following steps:

(i) Preliminary enquiry on receiving report of misconduct.

(ii) Issuing of charge-sheet if there is a prima facie case for misconduct and if there is some evidence for establishing the same and for obtaining explanation of the delinquent employee.

(iii) Holding fair and unbiased domestic enquiry, (if explanation of the employee is. found unsatisfactory), in conformity with the principles of natural justice, giving full and real opportunity to delinquent employee to prove his or her innocence.

(iv) The punishing authority is to consider the report and decide the punishment to be awarded if the employee is found guilty.

In deciding the punishment, it has to be seen that it is in proportion to the offence committed. The employer has also to see that the enquiry has been conducted properly before communicating the decision to the employee concerned. If at that time, the employee is a party to any pending Industrial dispute, the punishing authority should

take the approval of the concerned authority before whom the dispute is pending, before conveying the decision to the employee. Even if the decision is conveyed to the employee, before taking necessary permission, the employee may be informed that necessary permission is being obtained, and his or her dismissal will take effect from the date the permission is given. In the meanwhile, he or she will be considered as suspended. In India under section 33 of the Industrial Disputes Act, 1947, now Chapter IX and Chapter X of the Industrial Relations Code-2020 provides relating to Lay Off, Retrenchment and Closure , if an employee is to be dismissed or discharged, and he or she is a party to a dispute which is pending before any conciliation or arbitration or adjudication authority, prior permission or approval of that authority has to be taken for passing any order of dismissal or discharge. If the employee concerned is not party to the dispute, he or she can be dismissed with one month notice or one-month wages in lieu of the notice, and during that month, the employer has to apply for permission for dismissal to the authority concerned. In case of "protected workmen", prior permission for dismissal and discharge is essential even when they are not connected with the dispute. These protected workmen are union office-bearers who are declared as such, to save them from being victimised for raising or conducting the dispute. They are nominated by the unions, and their number is not to exceed one percent of the total workforce, subject to the minimum number of five.

14.13 RETRENCHMENT AND LAY OFF

Retrenchment is a termination of service for reasons of redundancy or surplus to requirement. Retrenchment does not include voluntary retirement, retirement and termination on the grounds of ill health. By a recent amendment, non-renewal of contract is not to be regarded as retrenchment. In other words, retrenchment is termination of service, but all terminations of service are not retrenchment. According to the ruling of the Supreme Court of India "retrenchment" as defined in the Act is not to be given any wider meaning than the ordinarily accepted connotation of the word and termination of service of a workman for any reason other than he was surplus would not constitute retrenchment.

In other words, termination of services, on account of disciplinary action, or prolonged illness, or retirement and superannuation, expiry of contract, termination of contract as per the terms of the contract, unsatisfactory working during the probationary period as provided in the standing orders or service contract and non-renewal of contract, is not retrenchment.

Lay-off is not termination of service. It is only temporary denial of employment due to circumstances beyond the control of employer, such as power shortage, mechanical breakdown, non-availability of raw material, accumulation of stocks, shortage of coal, and natural calamity or any other connected reason.

Procedure for Retrenchment:

In case of workmen who are Indian nationals, the principle of 'first come last goes' has to be followed for retrenchment. The authorities can retrench any other employee after recording the reasons for the same. For this purpose, seniority is to be considered in relation to the same category of employees. Process of retrenchment is based on the law which states that no workman employed in any industry who has been in continuous service for not less than one year or who had worked for 240 days on the surface or

190 days underground in 12 calendar months under an employer shall be retrenched by that employer unless

(a) the workman has been given one month notice in writing indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid one month's wages in lieu of notice;

(b) the workman has been paid, at the time of retrenchment, compensation equal to 15 days average pay for every completed year of service or any part thereof in excess of six months;

(c) notice in the prescribed manner is served on the appropriate Government.

No such notice may be required if the retrenchment is under an agreement which specifies date for the termination of service. The 240 and 190 days working period which qualifies a workman for receiving compensation includes days for which he was on leave with wages, or laid-off under an agreement or is permitted by Standing Orders, or absent due to temporary disablement caused by accident arising out of or in course of employment, and in case of a female employee the days on which she has been on maternity leave.

Transfer and Closure: The retrenchment compensation is also payable to workmen in case of transfer and closure of undertakings. In case of closure the employer has to give sixty days notice explaining the reason for closure to the employee as well as to the appropriate Government. In case of closures which are beyond the control of the employers or due to unavoidable circumstances, maximum compensation payable is limited to three months average pay. Financial difficulties, accumulation of undisposed stocks, expiry of lease and licence are not considered as unavoidable circumstances. Compensation is not payable for closure by the undertakings set up for the construction of the buildings, bridges, roads, canals, dams and other construction works if they are closed within two years from the date they are set up.

Retrenchment in Establishments Employing More Than 300 Persons:

Chapter X of the Industrial Relations Code , 2020 provides a different Disciplinary Issues and law regulates retrenchment in these establishments. For retrenchment and closure, these Employees' Grievance establishments are required to give three months notice instead of one month and 60 days Handling notice required to be given by smaller establishments. In case of closure, bigger establishments have to pay compensation as in case of retrenchment and the maximum limit of three months wages applicable to smaller establishments is no longer applicable to them. Still more important restriction on retrenchment by the bigger establishments is that they are required to apply to the Government for permission to effect retrenchment, and the latter will not be effective unless the permission is granted. For closure and layoff also they have to seek permission. On receiving the application for permission, the Government gives opportunity to be heard to both the management and the employees and their organisations. Whatever may be the decision of the Government, it will remain in force for one year. The parties are permitted to apply to the Government for reviewing their own decisions. The Government has to take decision within two months of receiving the application, and if the management does not hear anything from the Government, for two months, the permission will be considered to have been granted. The main objective is to prevent the employers from retrenching employees either light heartedly or for invalid reasons.

14.14 SUMMARY

In the changing business environments, organisations are changing very rapidly. These should be managed and carried out in such a manner that the hardship involved may be minimised, and they should not have any demotivating effect on other employees. Employees are backbone of the organisation and importance of discipline in organisation is essential for success of organisation. To ensure that an organisation runs smoothly there must be staff discipline. How-ever, an autocratic management style is not acceptable today. So, this is a difficult task. No longer will workers tolerate fines or similar pecuniary penalties for what the organisation sees as departure from acceptable behaviour. Maintenance of discipline in organisation is joint responsibility of both workers and management. The approach to managing discipline depends to a great extent upon managerial philosophy, culture and attitude towards the employees. Positive motivational initiatives include praise, participation and incentives, where as negative attitude and techniques involve punishment and disciplinary actions. Positive environment of an organisation promotes sense of self discipline. Hence, the managers and employees should always try to develop positive environment for success of the organisations and should always try to avoid disciplinary actions.

14.15 SELF ASSESSMENT QUESTIONS

1. Define Discipline and discuss objectives and importance of discipline in an organisation.
2. Explain concept of discipline. How discipline should be maintained in an organisation.
3. Explain the process of disciplinary actions and its advantage and disadvantages.
4. What is charge sheet? How you will prepare a charge sheet against employee.?
5. What is Domestic Enquiry? Explain the procedure of holding domestic enquiry against an erring employee.
6. Write short notes on various disciplinary actions.

14.16 FUTURE READINGS

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4. C.S. Venkataratnam, Industial Relations, Oxford, Mumbai, 2006.
5. Pandit. K. International Industrial Relations, Himalya Publishing House, New Delhi, 2018.
6. Govt. Of India, Proposed Industrial Relations Code-2020.