

GUIDELINES FOR DEFENCE REPRESENTATIVES

A defence representative is a person who defends his fellow employees against any unjust disciplinary action and ensures that justice is rendered. While the employer has all the legal and technical resources on his side, the employee can successfully defend his case only through a well trained defence representative.

In this context, defence representative needs to be well versed in the steps and process involved in the disciplinary proceedings. He should have the knowledge of what exactly constitutes indiscipline, the right of the charge sheeted employee and the conditions to be fulfilled by the employer before proceeding on the course of the domestic enquiry and therefore, a sound knowledge of the procedure of disciplinary proceedings will help the defence representative to defend the case with confidence.

It is to be understood that the ultimate objectives of departmental/domestic probe is to determine or to draw inference whether punishment should or should not be awarded to an employee and so the principles of natural justice are applicable to domestic enquiries even though there may not be any rule or provision to that effect.

The principles of natural justice are considered to be more important to ensure justice to the workman whose conduct is being enquired into. Hence, it is essential to understand its scope and extent and implications for purpose of domestic enquiry.

The principles of natural justice are not recognized as fundamental rights under the Constitution of India. Since the term 'Natural Justice' is vague, it implies a number of other requirements, observance of which is essential if one has to comply with the principles of Natural Justice. Moreover Natural Justice in favour or against depends or varies from case to case.

The task as a Defence Representative is not a rosy one. It is distinct from that of a Presenting Officer. While the Presenting Officer does not lose anything if he does not succeed in his case, the Defence Representative will be feeling bad if he fails to extricate the charge sheeted employee from his involvement.

A person with open mind and thorough with the departmental rules, regulations and with a fair knowledge of examination of witnesses would be an ideal Defence Representative.

Once you undertake the job as a Defence Representative, your responsibility is great. Your work requires considerable diligence and planning, which may be stated as under.

1. Having given acceptance to serve as Defence Representative, do not wait for the hearing for knowing the facts of the case. Get all the papers available with the delinquent without any loss of time. Study them and equip completely with all the records relating to the case.
2. Prepare your list of documents in consultation with the delinquent required from the management, so that you may quickly apply for additional documents from the management after production of its documentary evidences and before examination of its witnesses against the delinquent.
3. From the study of charges leveled in concerned charge sheet and list of evidences and witnesses of the management, you will be in a position to know in advance about the plan of the Presenting Officer against the delinquent.
4. Raise preliminary objections, if any well before start of management's side.

5. As and when the chief examination of management's witnesses is on, note down the points for clarification at the cross examination.
6. Frame the questions for cross-examination sufficiently in advance. Have a mock hearing by yourself trying to answer the questions set for cross-examination.
7. Do not put too many questions to the management's witnesses. As a shrewd witness may effectively answer them all against the charge-sheeted employee, better not to put unnecessary questions and to give room for adverse inference against the delinquent who is already in trouble.
8. Remember, any amount of statements from the mouth of the defence witnesses may not be any help unless they are believed as they may be brushed aside by one stroke as 'being interested', but the same kind of treatment cannot be meted out to statements made by management's witnesses examined during cross-examination.
9. It is better you put suggestive questions so that your possible line of defence is somewhat laid even during the examination of management's witnesses. Do not wait till the examination of your witnesses for building of your defence.
10. Be clear in your mind that the impression created in the mind of the enquiry officer is important and therefore, you should aim at gaining his confidence and sympathy and to avoid putting questions unsavory to him. Policy of bold assertion of rights and at the same time politeness in manners should be diligently followed.
11. Do not clash with the Presenting Officer on points which may prejudice the interests of charge-sheeted employee.

12. Do not raise frivolous objections and at the same time do not fail to achieve valid points, which will go a long way in easing the position against the charge-sheeted employee.
13. During the presentation of the management's case, your handling of the case should be such that the other side finds it difficult to build its case against the delinquent.
14. Do not allow the noose to be put around neck of the delinquent and accordingly your attempt and attention should always be to loosen the knot against the charge-sheeted employee and to prove that the department has not proved its case to the milt of even beyond reasonable doubt.
15. Must see that during the cross-examination of management's witnesses enough doubts are created in their statement, so that you can claim the full benefit thereof.
16. You must be able to argue that even if the preponderance of evidence is against the charge-sheeted employee, he had acted bonafide, without any deliberate intent.
17. In case of suspension, charge of delay in any matter must not be on your side during one year of period for due increase in the payment of subsistence allowance equivalent to full wages to the employee concerned.
18. It is generally said that an accused is convicted or acquitted not because he has or has not committed the offence he is charged with, but because of his inability or ability to engage an able lawyer.

YOUR ABILITY IS AT TEST