

ID No.22/2009

02<sup>nd</sup> December, 2022

Present: None for the Claimant.

Shri, Rajat Arora, Ld. A/R for the Management.

This order intends to decide the preliminary issue framed by order dated 23.04.2012 regarding the legality and fairness as well as deduction of the principle of nature justice in the domestic inquiry conducted against the claimant.

Defects leading to the Industrial Dispute and relevant for deciding the preliminary issue as narrated in the claim petition in Court escape the claimant Rajinder Kumar Singha, was working as a Clerk cum-cashier (CC) in the management then since 29.09.1980. When he was posted in the Branch of the Bank at Rani Bagh, an inspection was conducted in the State Branch which led to discovery of certain facts of fraud conducted in the transaction of the Bank. The management suspected involvement of the claimant in the said firm and he was placed on the suspension forthwith. A Police complaint was lodged and after investigation he was charge sheeted by policy. Simultaneously, the management of the Bank issued charge sheet to him and a domestic inquiry was initiated. The claimant challenged the parallel proceedings before the Hon'ble of Delhi. Apprehension was expressed that the cross-examination of the witnesses in the criminal trial as well as in the domestic inquiry cause pre-mature disclosure of the defense and may be prejudicial to his interest. The Hon'ble High Court of Delhi state the Departmental proceedings but later one it was vacated. Being aggrieved he preferred LPA before the Hon'ble High Court of Delhi and the Hon'ble Division Bench initially granted stay on the domestic inquiry but later on the same was vacated. The Claimant moved the Hon'ble Supreme Court while filing one SLP. But to his misfortune the same was dismissed too. Under the care of pre-mature disclosure of the defense the claimant could not adduce evidence in the domestic inquiry as the criminal trial against him was yet to commence. The enquiry officer of the departmental proceedings without releasing the difficulty faced by the claimant in a hot haste concluded the inquiry. When the SLP filed by the claimant was dismissed by the Supreme Court he requested the inquiry officer

to give him in opportunity to cross examination the department witness. This genuine demand of the claimant was rejected and the enquiry officer submitted his report which was accepted by the disciplinary authority and who issued a so cause notice as to file the punishment propose by the inquiry officer shall not be accepted. The claimant gave reply indicating there under that the domestic enquiry was conducted in an unfair manner and he should be given opportunity to cross examination. But the said submission was not considered and the disciplinary authority passed the order imposing the punishment of dismissal without notice against him. The departmental appeal filed by the claimant was also rejected and his stand with regard to the disproportionate punishment was not considered at all. Being aggrieved he raised the industrial dispute before conciliation Officer and the Conciliation since failed the appropriate Government referred the matter for adjudication on the legality and justification of the action taken by the disciplinary authority against the claimant.

The management then appear and filed written statement refuting the stand taken by the claimant in the claim petition. File admitting that the claimant was last posted in the year 1998 in the Rani Bagh Branch of the management then it has been stated that the claimant was found involved in gross misconduct causing damage in the reputation of the bank. During inspection six instances where detected in which the claimant was found to fraudulently credited huge amount into the account of other persons and later transferring the same to his account and taking cash by way of withdrawal. This activity was undertaken by the claimant in his account as well as in the account of his wife. He was also found not to harm properly maintain the impressed clearing leisure by posting the vouchers in the same. The fraud being serious police FIR was lodged against the claimant and the matter was then handed over to CBI for investigation. The investigation and criminal trial could not proceed as expected and thus after lapse of one year the management found it expedient to proceed with domestic inquiry. Accordingly, the charges were framed and supplied to claimant for his reply. The claimant gave a reply to same but it was not found satisfactory. Thus the disciplinary authority decided to hold the domestic inquiry and the inquiry and presenting officer where appointed. All relevant documents were handed over to the claimant as the charge sheeted employee and he was called upon to participate and set up his

defense. The claimant participated in the inquiry whose started on 15.05.20201 and concluded on 02.03.2002. During the inquiry the claimant was called upon the produce defense evidence and the day to day proceedings were handed over to him. All fairness was adopted in conduct of the inquiry. The claimant instead of adducing the defense evidence filed writ petitions before the Hon'ble High Court and for the interim orders passed directing not to pass the final order, the domestic inquiry remained pending. After dismissal of the writ petitions by the Hon'ble High of Delhi the claimant preferred SLP and the Hon'ble Supreme Court by order dated 20.01.2006 dismissed the SLP. The Claimant was then advised by later dated 14.05.2004 to submit his brief/defense within 10days, The claimant requested for time and the same was allowed too. The claimant made several correspondences seeking time. After allowing time ultimately the inquiry officer gave his findings on 14.06.2004 holding all the charges expect one proved. The copy of the inquiry report was sent to him to give reply. He again asked for time which was allowed. Since no reply was received a so cause notice dated 21.01.2006 as per the Bi-parpritate settlement dated 10.04.2002 proposing punishment of dismissal without notice was issued. He was also called upon for a personal hearing. During the personal hearing the claimant gave a representation which was not accepted and the report of the inquiry officer was accepted by the disciplinary authority. The departmental appeal filed by the claimant was considered but rejected for lack of merit. Hence, the management has stated that the claimant was given all opportunity to participate in the domestic inquiry and all the documents and daily proceedings were supplied to him. But he omitted deliberately to participate and made all effort to buy time which is evident from the fact that he filed writ petitions and SLP one after another and all were rejected at the end. The management has thus pleaded that the allegations about not adoption of fairness in the inquiry and injustice caused to be claimant as has been alleged are false and claim is liable to be rejected.

Both parties filed documents in support of their pleadings. On the basis of the said pleadings this Tribunal by order dated 23.04.2012 had farmed three issued and directed to decide issue no 1 as a preliminary issue to examine the fairness in the conduct of the domestic inquiry. The claimant examined himself as WW1 and the management examined the enquiry office as MW1. Both the witnesses were crossed examination at length by the adversary. The claimant

did not produce any document but he was confronted with the documents filed by the management during cross examination but management witness while testifying produced a volume of documents marked in the series of MW1/1 to MW1/22. These documents include charge sheet the criminal compliant the proceedings of the domestic inquiry and the order passed by the disciplinary authority and the Appellate Authority.

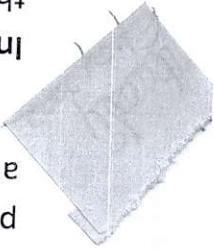
During course of arguments the Id. A/R for the Management submitted that the claimant has admitted the inquiry proceedings and the report submitted by the enquiry officer. From the documents relating to the inquiry proceedings it is evidently clear that the claimant was fully aware about the proceedings and was duly served the documents and least of witnesses. He was given the opportunity to engage a defense assistance and cross examining the department witnesses. But the claimant as a matter of choice decided not to cross examining the witnesses and approach the Hon'ble High Court by filing Writ Petitions and could succeed to stall the inquiry proceedings for some time for the interim orders passed. But ultimately High court found distant of the claimant on justify and dismissed the Writ Petition. The Hon'ble Supreme Court did not entertain the SLP filed by the claimant. Having failed in all his possible attempts the claimant came back to the inquiry officer with a request to give him a chance to cross examining the departmental witnesses. But the request not was not accepted since the inquiry was concluded by them. The claimant with a misconceived idea that cross-examining the witness in the domestic inquiry may amount to disclosure of defense in the criminal trial did not participate and the same cannot be used as a defense by him at this stage. Hence he submitted that there is no infirmity in the conduct of the domestic inquiry and the final order passed therein. This Tribunal cannot interfere the managerial decisions and the preliminary issued be decided in the favour of the management.

In the counter argument the Id. A/R for the claimant submitted that at the time of the enquiry the procedure laid down in the standing order and Bipartite settlement flouted and on that account alone the preliminary issued be decided in favor of the claimant. He also argued that at this stage the Tribunal has only to examine if the principal of the natural justice were violated or not. The merit and credibility of the evidence cannot be gone into. He

pointed out that the claimant was a literate person working as a clerk cum-Cashier (CCL) and he was aware of his own rights. Since the criminal trial was yet to commence he had a reasonable apprehension about premature disclosure of the defense plea. But his grievance was never considered by the inquiry officer. Hence, principal of natural justice, which requires to consider all the apprehensions of a party to a proceedings was overlooked and the serious prejudice was caused.

The claimant who was examined as WW1 was confronted with the documents filed by the management and asked if he could substantiate that the document demanded by him were not supplied. Though the witness stated that he wanted copy of the case deposit vouchers and the same were not supplied, on being asked to indicate when such a demand was made. On the contrary, during cross examination he admitted in clear terms that opportunity was given to him to cross examine the witness examining by the bank. He was confronted with the proceedings of the inquiry marked as WW1/M1 and admitted that he had crossed examined S.K Goel and Ramanjeet Kaur, the department witness on 16.01.2002. These things clearly nullified the stand of the claimant that right to cross examine the witnesses was denied. On the other hand, the management witness has produced the entire inquiry proceedings and the proceedings dated 19.12.2001 or which the signature of the claimant appears acknowledging his presence clearly shows that the documents were supplied to the claimant by the presenting officer and as desired by the claimant the name and designation of the official witnesses were supplied to him. These are the photocopies of the day to day proceedings and from the said documents it is evidently clear that the claimant has been participated in the inquiry properly. The proceedings dated 16.01.2002 marked as MW1/15 shows that the claimant had cross examined witness Ramanjeet Kaur, and S.K Goel. MW6 was reexamined by the claimant too. All these aspects taken together clearly shows that the claimant had actively participated in the inquiry and all the relevant document handed over to him and as when demanded.

The Hon'ble Supreme Court in the case of **B.C Chaturvedi vs Union of India, reported in AIR 1996, 484** have held that the tribunal expect examining the fairness adopted in conduct of the inquiry cannot go to the examining the



merit of the evidence collected during the inquiry. Once the inquiry is held to be conducted fairly, under the scope of Section 11 A of the ID Act, The tribunal has vide power to examine the materials available on records establishing the prima facie liability of the delinquent employee. Thus, it is beyond despite date for deciding the preliminary issue the tribunal is required to examine whether the principle of natural justice where violated and the order was passed mechanically making the same a mala fide order, or it was conducted fairly giving proper opportunity to the charges employee to set up his defense.

In this case, as seen from the documents of the departmental inquiry conducted against the claimant and the evidence adduced, a so cause notice was served on him along with the charge. But the reply given was not found satisfactory and the authority decided to hold the inquiry. Though the claimant from the very beginning has pleaded about denial of opportunity to cross examining the witnesses and the regime assigned that the earlier opportunity was not availed for the fear of premature disclosure of the defense, the material on record clearly show that the claimant had availed the opportunity of cross examining. The claimant has described the conduct of the departmental inquiry mala fide action of the management and argued about his victimization. The law is well settled that the burden of establishment mala fide lies heavily on the person who alleges it. Similarly, the onus of proving victimization is all on the employee who has to prove the same in affirmative. In the case of **Unions of India vs. Ashutosh Kumar Shrivastav (2002) 1 SCC 188** The Hon'ble Supreme Court had held that there is always a presumption in favour of the administration that it exercises power in good faith and for the public benefit.

In this case, as seen from the inquiry proceeding, all the steps taken right from the framing of charge to appointment of inquiry officer who are duly intimated to the claimant. The inquiry was conducted in presence of the claimant and he had acknowledged the same by putting his signature on the daily proceedings. From the report of the inquiry and the proceedings of the inquiry, there is nothing to believe that the principle of natural justice, were bilateral, from the said proceedings it is otherwise evidence that the claimant having knowledge of the proceedings opted to file writ petitions to delay the proceedings and after closure of the inquiry demanded opportunity to cross

examining the witnesses which was denied. It is worth mentioning that the claimant during his cross examination in his proceedings has clearly admitted that the opportunity to cross examining the witnesses was granted to him and he was attending the proceedings on each date. His signature on the margin of the proceedings lead to a conclusion that after reading and understanding the contents thereof he was putting his signature he has also admitted about supply of all documents. His objections with regard to the copy of the payment vouchers could not prove as the claimant could not substantial the same.

Thus, from the totality of the evidence and material available on record it clearly appears that the domestic inquiry against the workman was conducted following the procedure and the principal the nature justice, and the same cannot be held as vitiated. Issue no. 1 is accordingly, decided against the claimant and in favour of the management. Call the matters on 30/1/23 for arguments on the proportionality of the punishment awarded.

Presiding Officer  
02.12.2022