

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – CUM –
LABOUR COURT-II, NEW DELHI**

I.D. NO. 56/2008

Late Sh. Subedar Ali Nawab Ali Siddiqui,

through his Legal heirs:

1. Smt. Shakina Begum(Wife)
2. Sh. Mustaq Ahmed (Son)
3. Sh. Iftexhar Ali (Son)
4. Sh. Atiq Ahmed (Son)
5. Ms. Rehana Begum (Daughter)
6. Ms. Sahana Begum (Daughter)

R/o N-Block, H.No. 298, Street No. 6,
Sunder Nagri (extn. of Nand Nagri),
Delhi.

...Claimants/Workman through LRs.

VERSUS

**The Branch Manager,
Bombay Mercantile Co-operative Bank Ltd.,
36, Netaji Subhash Marg, Darya Ganj,
New Delhi-110002.**

...Management/Respondent

ORDER

08.06.2026

1. This order shall dispose of issue no. 1 framed by the Hon'ble Predecessor of this Tribunal on 15.01.2013 "Whether the department enquiry conducted in this case was legal, just and fair and was not in violation of the principles of natural justice. If no, what directions are called for in this case?"

2. Before proceeding further, the facts of the present case are required to be produced herein:

Facts of the case:

Appropriate government through **Sh. Ajay Kumar, Desk Officer** has sent the reference dated 04.12.2008 to this Tribunal in the following terms:

Whether the action of the management of Bombay Mercantile Co-operative Bank Ltd. in dismissing the services of Sh. Subedar Ali Nawab Ali Siddiqui w.e.f. 24-06-2005, is legal and justified? If not, to what he is entitled to?

At the outset, it is important to mention here that claimant Sh. Subedar Ali was expired on 15.06.2017 and in his place his legal heirs namely **Ms. Shakina Begum (wife of the claimant), Mustaq Ahmed, Iftexhar Ali and Atiq Ahmed (sons of the claimant), Ms. Rehana Begum and Ms. Sahana Begum (daughters of the claimant)** were impleaded vide order dated 08.02.2018.

Upon receipt of the reference, workman has filed statement of claim before this Tribunal. In a nutshell, claimant's case is that he was appointed with **Bombay Mercantile Co-operative Bank Ltd.** w.e.f. 01.07.1983 and was holding the post of "Cashier cum Clerk" with employee code no. 1619 at the time of his illegal dismissal from the services of the respondent. He had put up twenty-two years of unblemished services with the bank and he had been discharging his duties most diligently and efficiently. Mrs. Beera Bawa, Mrs. Rita Babbar, Mrs. Pooja Arya, Mr. Virender Arora, and Mr. Ismile Khan were charge-sheeted on 22.12.2004 alleging that the workman i.e. Ms. Pooja Vinod Arya acted negligently and recklessly displaying lack of banking knowledge while performing her duties as Assistant Accountant due to which an amount of Rs. 1,75,000/- has been

fraudulently withdrawn from the Saving Bank **Account No. 54693 of Mr. G.K. Marwah**. Management vide their letter no. 67/STF/IR/1492 dated 06.01.2005 appointed Justice Abdul Sattar Qureshi as Inquiry Officer to inquire into alleged charges in respect of five officials of the respondent bank involved in the fraud namely Mrs. Meera Bawa, Mrs. Rita Babbar, Mrs. Pooja Arya, Mrs. Virender Arora, and Mr. Ismile Khan. He held the inquiry proceedings in respect of all charged officials. The statement of Branch Manager was recorded on 18.01.2005 and 19.01.2005. Enquiry Officer conducted the enquiry in a partition manner and his findings are perverse and illegal against the principles of natural justice. Inquiry report revealed that inquiry officer has unnecessarily indulged and acted beyond the function and scope of inquiry and his role of inquiry officer. The conduct of the inquiry officer was biased, not fair just and judicious. The inquiry officer recommended that the 6th person i.e. the workman Mr. Subedar Ali who made the payment of Rs. 1,75,000/- in cash has not been suspended or charge sheeted. Though, the branch manager had clarified before the inquiry officer that in this bank, the bank cashier is not held liable for wrongful payment if the instrument is cleared by the other concerned officers/employees. Disciplinary authority without applying its mind placed the workman under suspension vide office order no. 67/STF/IF/15680 dated 28.01.2005 for the alleged misconduct of committing omission and commission while performing his duties due to which fraudulent withdrawal of Rs. 1,75,000/- had been made from the Savings Bank Account no. 54693 of Sh. G.K. Marwah. He had denied all the charges in response to the charge-sheets issued to him. He had given the written representation; however, inquiry officer has given his report. Respondent issued the show-cause notice to the workman for dismissal. Hence, he made prayer to reinstate him with full wages.

Respondent has filed the written statement. He submitted that claimant has not approached this Hon'ble Court with clean hands and

has concealed material facts from this Hon'ble Court and is not entitled to any relief on this ground alone. Claimant had filed a suit challenging show cause notice for dismissal before **Civil Judge, Tis Hazari Courts, Delhi**, for mandatory injunction which became infructuous as the services of the workman was terminated vide letter dated 24th June, 2005. Subsequently, workman got amended the plaint. The suit ultimately was dismissed as withdrawn vide order dated 16.10.2007. He further narrated the facts about one Mr. G.K Marwah, maintains a saving bank account no. 54963 with BMC Bank Ltd. It is reported that on 30th November, 2004, Mr. G.K. Marwah issued a crossed cheque bearing no. 510833 dated 30th November, 2004 for Rs. 1.75 lacs in favour of **M/s. Ansa Arun Construction**. On 1st December, 2004, the said cheque was presented for payment at Delhi branch in the said account with big amount slip dated 30th November, 2004 by an unknown person. It is observed that the crossing on the said cheque was cancelled by writing across the cheque "*crossing cancelled, please pay to cash*" which was purportedly authenticated by the amount holder. The name of the payee M/s. Ansa Arun Construction was struck off by writing "Self". The alterations on the cheque have been made in different hand writing which contain mistakes in spelling and language. The signatures authenticating the alterations do not tally with the signatures of the account holder. Said cheque was honoured and payment of Rs. 1.75 lacs was made accordingly. He further submitted that claimant was advised to submit his explanation to the aforesaid charge-sheet. Inquiry was conducted. He submitted that claim of the claimant is liable to be dismissed.

Workman and management both have led their evidence to their respective contention. Workman in his affidavit of evidence has reiterated the facts as stated by him in his claim statement. Workman had also mentioned in his affidavit that the enquiry officer exceeded his authority to conduct the inquiry while suggesting the

imposition of dismissal from service of the deponent. Enquiry officer was prejudiced, biased and pre-determined to inflict maximum penalty in the matter. He further deposed the facts that charge-sheet of the employees who were dismissed from the services of the respondent bank Mr. Retta Babbar, Ms. Pooja Vinod Arya, Mr. Virender Arora have filed their claims for quashing of the dismissal under Industrial Dispute before this Hon'ble Court. Both the sides filed submission, evidences and witnesses were cross-examined during the hearing and this court after hearing both the sides passed an award vide order dated 18.1.2007 stating that the action of respondents in dismissing the services of these workmen namely, Pooja Vinod Arya, Ms. Reta Babbar and Ms. Virender Arora, is neither absolute just, nor valid nor legal. Management was directed to reinstate with continuity of service with stoppage of two increments with cumulative effect but without back wages within two months from the date of publication of award. He further deposed that, this Court, while passing the award dated 18.12.2007 in favour of other person noted that workmen were not provided defence assistant and they have not been permitted to cross examination the witnesses. The Hon'ble Court in page 44 of award has observed that the inquiry has not been conducted in proper form, opportunity for cross examination has not been given to the workmen. They have not been permitted to engage their own defence assistant. He has relied upon the following documents:-

- (i) **Ex. WW1/1-** Copy of charge sheet letter no. 67/STF/(IR)/4189 dated 22.12.2004.
- (ii) **Ex. WW1/2-** Copy of statement of Branch Manager Asadulla dated 15/18 & 19.01.2005.
- (iii) **Ex.WW1/3-** Copy of inquiry report dated 24.01.2005.
(Colly.)
- (iv) **Ex.WW1/4-** Copy of suspension letter no. 67/STF/(IR)/15680 dated 28.01.2005.

- (v) **Ex.WW1/5-** Copy of charge sheet letter no. 67/STF/IR/5796 dated 31.01.2005.
- (vi) **Ex. WW1/6-** Copy of reply to the charge sheet dated 11.12.2005.
- (vii) **Ex. WW1/7-** Copy of extracts of duties of paying cashier.
- (viii) **Ex. WW1/8-** Copy of appointment of IO letter no. 68/STF/IR/3019 dated 28.05.2005.
- (ix) **Ex.WW1/9-** Copy of the representation asking defence assistant dated 03.06.2005.
- (x) **Ex.WW1/10-** Copy of statement of deponent dated 03.06.2005 and 06.06.2005.
- (xi) **Ex. WW1/11-** Copy of show-cause notice of dismissal dated 11.06.2005, letter no. 68/STF/IR/3724 along with inquiry report. (colly.)
- (xii) **Ex.WW1/12-** Copy of the reply to the show-cause notice of dismissal.
- (xiii) **Ex.WW1/13-** Copy of order of dismissal of workman vide letter no. 67/STF/IR/4457 dated 24.06.2005.
- (xiv) **Ex.WW1/14-** Copy of Rules of the Bank.
- (xv) **Ex.WW1/15-** Copy of application and judgment and order dated 16.12.2007.
- (xvi) **Ex. WW1/16-** Copy of the award bearing ID no. 6, 7, 26/2006 dated 18.12.2007.
- (xvii) **Ex. WW1/17-** Copy of the ALC HQSP/7(21)/07 dated 19.11.2007 and Reference order no. L.12012/138/2008-IR-(B-1), GOI dated 04.12.2008.

Workman in his cross-examination has admitted that he joined his service in bank on 01.07.1983 at the post of "Peon" and thereafter he was promoted as "Cashier cum Clerk" on 01.10.1996. He further admitted that disciplinary enquiry was also held against five others employees by the management bank. He also admitted that two preferred appeal against dismissal order prior to agitating

the matter in CGIT. He denied that due to his negligence Rs. 1.75 Lac was paid to wrong person.

In rebuttal, respondent has filed three affidavits. First two affidavits of evidence of management witnesses i.e. Rais Ahmed and Tanveer Hasan's, have been partly cross-examined and their cross-examination has been deferred. Thereafter, management has filed the application seeking substitution of the witness with Arif Hussain, who has filed the affidavit of evidence. He deposed that claimants were dismissed after holding the proper enquiry. He submitted that the saving departments were exclusively being looked by Mrs. Meera Rani Bawa, Officer-in-charge, saving premises which situated at the different place and she did not consult with the branch manager regarding passing of the cheque. All the six staffs involved have been found guilty after holding an enquiry officer of negligence and not performing the duties. He further said Mrs. Rita Babbar, Pooja Vinod Arya, Virender Kumari were dismissed and they raised an industrial dispute which was answered in their favour vide award dated 18.12.2007. He further submitted that bank preferred W.P.(C) No. 2608-2610/2008 before Hon'ble High Court where the effect and operation of the impugned awards dated 18.12.2007 was stayed. Mohd. Israil Khan had challenged the departmental enquiry and his termination in W.P. (C) no. 18105/2005 which was dismissed by the order dated 10.01.2006, thereafter, he also preferred L.P.A No. 1228/2006 against the order dated 10.01.2006 against the order and judgment dated 10.01.2006 passed in W.P. (C) no. 18105/2005 which were also dismissed by the Division Bench of this Hon'ble Court by its order dated 29.04.2004. Being unsuccessful, he has filed a claim before the Ld. CGIT, Karkardooma Courts, Delhi in ID No. 35/2009. Mohd. Israil Khan had challenged the termination by the management. Ld. CGIT by its order dated 07.05.2010 has found the officer lacking in caution, diligence.

Management witness in his cross-examination admitted that the cashier at the last leg verified the authorized checking and makes payment. He admitted the document Ex. WW1/6 which is the manual of the bank containing the details of the duty discharged by the cashier. He cannot deny the suggestion that Asad Ullah was a witness in the proceedings the record of which has already been placed in this case record.

3. Whole of the case of the management rests on the premise that an enquiry has been conducted by Justice Abdul Sattar Qureshi and he found him guilty. But, if we go through the inquiry report as well as the documents, it appears that the inquiry has not been conducted in a fair manner. Inquiry was held in a pre-determined mind about proving the guilt of the accused. Inquiry officer has not taken into consideration the statement of the then Branch Manager who has stated that the claimant has no fault in making the payment to the person representing the cheque, if the same has been cleared from the above said five person i.e. Saving Bank Incharge and Ors.. Even, no defense assistant was provided. Even, the inquiry in respect of the five persons i.e. Mrs. Beera Bawa, Mrs. Rita Babbar, Mrs. Pooja Arya, Mr. Virender Arora, and Mr. Ismile Khan was held to be vitiated for want of fairness by the Industrial Tribunal and they have been given reinstatement with full back wages. On the same footing, this inquiry is also held to be vitiated for want of fairness as it aims to only to prove the guilt. Ordered accordingly.

Date: 08.06.2026

ATUL KUMAR GARG
Presiding Officer.
CGIT-cum-Labour Court-II