

**IN THE COURT OF SMT. PRANITA MOHANTY : PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT
NO.II,
DWARKA COURT COMPLEX: NEW DELHI.**

ID. No. 159/2012

Shri Sharad Kumar, (dead)
Through Sunita Garg Legal Heirs
S/o Shri Om Prakash,
House No. Gali No. 3, Prempuri Colony,
Near Mittal Nursery,
Bheta Road, Saharanpur,
UP.

Workman

Versus

1. The Circle Head,
Punjab National Bank,
Circle Office, Muzaffar Nagar,
U.P.

2. Disciplinary Authority,
Punjab National Bank,
Circle Office, Muzaffar Nagar,
U.P.

Managements

ORDER:-

This order is intended to decide the preliminary issue framed by order dated 02nd May 2013 regarding legality and fairness as well as adoption of the Principles of Natural Justice in the domestic inquiry conducted against the claimant.

The facts leading to the Industrial Dispute and relevant for deciding the preliminary issue is that the claimant Sharad Kumar (dead and substituted by legal Heirs) was working as Daftari/Peon in the management Bank w.e.f 22.04.1985 as a regular employee. In course of time he was promoted and working as the Head Cashier in the year 2007 and posted in the branch at Ghunna Maheshwari. On 30.08.2007 he was placed under suspension in contemplation of a domestic inquiry on some frivolous and false complaint. On 12.11.2007 the charge sheet containing 7 charges alleging misappropriation of customers money and for being engaged illegally in money lending was served

on him. He was called upon to reply the charge sheet. The reply submitted by the claimant was not found satisfactory and the disciplinary authority decided to initiate a disciplinary proceeding. Accordingly the inquiring officer and presenting officer were appointed and the claimant was called upon to participate. Both parties adduced oral and documentary evidence and at the end of the inquiry the charges were found proved. Thus, the inquiry officer submitted the report of the domestic inquiry to the disciplinary authority proposing the punishment to be awarded to the claimant. The disciplinary authority served the copy of the inquiry report on the claimant and called him for a personal hearing. The explanation offered by the claimant was not found satisfactory and as such the disciplinary authority accepted the report of the inquiry and by order dated 25.09.2009 imposed the punishment of removal from service with superannuation benefits upon the claimant. Filling aggrieved the claimant preferred the departmental appeal but the same was decided against him and the order of the disciplinary authority was confirmed. The claimant then served a demand notice on the management Bank and approached the Labour Commissioner Dehradun. Steps taken for a conciliation failed and the appropriate government referred the matter for adjudication on the point if the removal from service with superannuation benefit imposed on the claimant pursuant to a domestic inquiry is just and proper.

The claimant filed his claim statement alleging that he became a victim of vindication as the senior management was annoyed on him for the promotion given to him. Even though he had a clean and unblemished career, on 12.07.2007 on the basis of some false allegation charge sheet was served on him and prior to that he was placed under suspension. Though, as per the bipartite settlement the Regional Manager is empowered to pass the order of suspension, in his case the senior manager had passed that order. He was denied timely grant of subsistence allowance. During the inquiry the charge was not read over to him nor the documents relied upon by the department were made available. Despite his objection secondary evidence was adduced. The account holders of the account from which alleged withdrawal was made though deposed in favour of the claimant as defence witnesses during the departmental inquiry, the enquiry officer who acted as the presenting officer too passed the illegal order holding the charges proved. The plausible explanation offered by him was not accepted nor he was granted proper opportunity to cross examine the department witnesses. He has also pleaded that the disciplinary authority as well as the departmental appellate authority in a biased manner found him guilty and

imposed the punishment disproportionate to the charge. Hence, in the claim petition he has prayed for setting aside the order of the disciplinary authority.

The Bank filed reply stating that the claimant was found involved in the action of misappropriating the money of the customers which was given to him to be deposited in their accounts. Since, the matter was evident on record charge sheet was prepared and departmental inquiry was initiated against the claimant. During the inquiry the senior manager for the inquiry the senior manager was appointed as the inquiry officer and the proceeding were held on various dates from 05.03.2008 to 27.11.2008. The management produced 52 documents and examined two witnesses one of whom was the senior manager who had conducted a fact finding inquiry of the allegations and also met the complainants. The claimant also brought the defence assistant and produced two letters. Besides that he also examined three witnesses. The DR engaged by the claimant cross examined all the witnesses examined by the management and before that all the documents relied upon by the management were supplied to the claimant. The management has thereby pleaded that the domestic inquiry was conducted fairly and during the process the Principles of Natural Justice were strictly followed.

On these rival pleadings issues were framed for adjudication and by order dated 2nd May 2013 issue No.1 was directed to be taken as a preliminary issue to examine whether the domestic inquiry was conducted fairly.

Being called upon the claimant examined himself as WW1 alongwith his affidavit he filed few documents which included the order of suspension, his reply to the charge, several correspondences were made after the disposal of disciplinary authority, the letter issued by the disciplinary authority for personal hearing etc. on behalf of the management one Saumya Mishra the manager HRD of the management Bank testified as MW1. She proved the documents which are the inquiry proceeding and marked as MW1/1 to MW1/17. Both the witnesses were cross examined at length by adversaries.

During course of argument the Ld. A/R for the management submitted that the claimant has admitted the inquiry proceeding and the report submitted by the inquiry officer. From the proceeding of the inquiry it is evidently clear that the claimant having knowledge about the proceeding and being duly served with the notice opted to participate in the same. While pointing out to the evidence of MW1 he submitted that the domestic inquiry as conducted following the

procedure laid down in the bipartite settlement and there is nothing on record to accept the claim of the claimant that the Principles of Natural Justice were violated. He also pointed out that on receipt of the inquiry report a notice to showcause was also served on him and he submitted a reply which was found unsatisfactory leading to passing of the final order. He thereby argued that there is no infirmity in the domestic inquiry proceeding and order and the tribunal cannot interfere with the managerial decision. In the counter argument the claimant submitted that during the entire inquiry proceeding the procedure laid in the bipartite settlement was flouted and on that count alone the preliminary issue be decided in favour of the claimant. He also argued that at this stage the tribunal has to examine if the Principles of Natural Justice were violated during the domestic inquiry or not.

Relying upon the judgment of the Hon'ble Supreme Court in the case of **B C Chaturvedi vs. Union of India reported in AIR 1996484** the management submitted that the tribunal, except the examining the fairness adopted in conduct of the inquiry cannot go to examine the merit of the evidence collected during inquiry. On the other hand the Ld. A/R for the claimant submitted that under the scope of section 11A, the tribunal has wide power to examine the fairness of the inquiry as well as the materials establishing the prima facie liability of delinquent employee.

Clause 19 point 1, 2 of the bipartite settlement dated 19th October 1966 and clause 14 of the Bipartite settlement dated 10.04.2002 lays down the procedure to be adopted in the disciplinary proceeding initiated against the employee of the Bank. Previously Labour Courts and Industrial Tribunals were not competent to interfere in the decisions of the management unless there was violation of the Principles of the Natural Justice or basic error of fact, perversity and victimization. Now the Labour Court can go into the justification of the action taken against the employee. However, it is beyond dispute that for deciding the preliminary issue the tribunal is required to examine whether the Principles of Natural Justice were violated and the order was passed mechanically making the same a malafide order.

In this case as seen from the documents and the oral evidence adduced by MW1 the departmental inquiry against the claimant was initiated after an objective assessment of the situation by the Senior Bank Officer and not as a result of dictation or direction by an extraneous authority. The management witness examined as MW12 who being the HR Manager and conversant with

the facts of the present case has stated that all the procedure prescribed under the Bipartite settlement were followed. She exhibited the copy of the departmental proceeding as exhibit MW1/1. Perusal of the said proceeding shows that on 14.03.2008 the charge sheeted employee/ claimant had appeared alongwith His DR and on that day the presenting Officer produced eleven documents alongwith a list. The cop of the same was handed over to the claimant. The acknowledgment has been marked as exhibit MW1/2. The documents filed by the management further reveals that on 08.05.2008 the presenting officer produced another set of the documents and the copies of the same were given to the workman. The acknowledgment has been marked as exhibit as MW1/5. On 04.06.2008 another set of documents were produced by the presenting officer and the clamant acknowledged receipt of the same wide exhibit MW1/7. On 26.08.2008 the management witnesses were examined and on 10.09.2008 both the witnesses were cross examined by the claimant. Similarly the inquiry proceeding filed by the management clearly shows that on different dates the claimant produced three defence witnesses and two letters. The documents were taken on record and the witnesses were cross examined by the management. The inquiry officer after examining the evidence adduced by both the parties submitted his report on 29.05.2009 holding the charges proved against the workman. Then the disciplinary authority before accepting the report called the workman to submit a showcuae and also gave him an opportunity of personal hearing. The explanations offered by the claimant found not acceptable and thus, the disciplinary authority passed the impugned order.

During hearing of the preliminary issue the claimant who testified as WW1 was thoroughly cross examined by the Ld. A/R for the management. During course of cross examination he was confronted with a domestic inquiry proceeding and his signatures appearing thereon acknowledging receipt of documents and the actions taken during the inquiry. To this the workman gave vague reply that during the inquiry though he was physically present was asked to sit outside the inquiry room and his signatures were being taken on blank papers. He was further asked about any complaint lodged in this regard to higher authority to which he replied in negative. The explanation offered by the claimant during cross examination is far beyond acceptance since, it is impossible on the part of a clerk cum cashier facing the domestic inquiry to sit outside the venue and give his signatures on blank paper when he was all along accompanied by the DR. Thus from the materials on record it is evidently clear that for the domestic inquiry was conducted following the Principles of Natural justice.

Be its stated here that the law is well settled that the burden of establishing malafides lies heavily on the person who alleges it. The onus of proving victimization is always on the employee who has to prove the same in affirmative. In the case of **Union of India vs. Ashutosh kumar Srivastava (2002) 1 SCC 188** the Hon'ble Supreme Court have held that there is always a presumption in favour of the administration that it exercises power in good faith and for public benefit.

In this case as seen from the inquiry proceeding all the steps taken right from framing of charge to appointment of inquiry officer were duly intimated to the claimant. The inquiry was conducted in terms of clause 14 of the bipartite settlement dated 10.04.2002. The inquiry report further reveals that after giving several opportunities to the claimant to cross examined the management witnesses and adducing his own evidence the order was passed. From the report of inquiry and proceeding of inquiry there is nothing to believe that the Principles of Natural Justice were violated. From the said proceeding it is otherwise evident that the claimant had duly participated in the proceeding. If at all he was not satisfied with the procedure adopted he could have raised objection in the appropriate time and before the appropriate authority. Or else he could have challenged the procedure adopted and the authority of the Inquiry Officer, Presenting Officer, Appellate Authority and the person who served the charge head on him in the court of law. Having not done so, the claimant cannot take a stand that due procedure was not adopted in the inquiry and there was violation of the Principles of Natural Justice.

Thus, from the totality of the evidence and materials available on record it clearly appears that the domestic inquiry against the workman was conducted following the procedure and the Principles of Natural Justice and the same cannot be held vitiated. Issue no.1 is accordingly decided against the claimant and in favour of the management. Call the matter on 08.12.2022 for argument on the proportionality of the punishment awarded.

Presiding Officer.
13/10/2022