

**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. 40/11

Shri Chamel Singh,  
S/o Shri Richpal Singh,  
PO Chipiyana Bujurg,  
Gauatam Budh Nagar, U.P.

Workman

Versus

The General Manager,  
National Bicycle Corporation of India,  
Hind Nagar, Ghaziabad, (U.P)

Management

**ORDER:-**

This order is intended to decide the preliminary issue framed by order dated 05/04/2013 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, and as narrated by the claimant in the claim petition is that the claimant Chamel Singh was working as a Turner in the factory of the management w. e. f. 16.05.1983. He was pro active for the legal and legitimate demands of the workers and as such involved in the union activities. This had created displeasure in the mind of the management, who was in search of an opportunity to punish and remove him from service. On 04.01.1990.on some false and frivolous allegation a charge was served on the claimant, who gave a satisfactory reply to the same. But the management did not accept the same and decided to conduct a domestic inquiry. During the said domestic inquiry the procedure as per the standing order were not followed. The documents demanded by the claimant facing the inquiry were not supplied and no proper opportunity for defence was afforded. In a pre determined manner the inquiry was closed and the major punishment like removal from service was imposed on him. Being aggrieved the claimant raised an industrial dispute before the labour commissioner and on failure of conciliation, the matter was referred to the Industrial Tribunal of UP at Gazhiabad. After a long time the said Tribunal disposed of the matter with a finding that the Tribunal lacks jurisdictional power to deal the matter. Hence the appropriate Govt.

referred the matter to this Tribunal. In the claim petition the claimant has pleaded for setting aside the finding of the disciplinary authority and his reinstatement in to service with all consequential benefits.

Being noticed the management appeared and filed written statement refuting the stand taken by the claimant on fact as well as on law. It is the contention of the management that the claimant was found involved in serious misconduct disturbing the discipline of the work place. For his in disciplined behavior amounting grave misconduct the charge sheet was framed and he was called upon to show cause. The show cause submitted by him was not satisfactory. Hence the management decided to conduct the domestic inquiry and the same was conducted strictly following the procedure laid down in law and the principles of natural justice. The claimant was an in disciplined employee and on many earlier occasions action was also taken on him for such behavior. On 10.03.1979, he was also dismissed from service and on consideration of his representation, he was reinstated on probation. But his performance was not found satisfactory and he was not confirmed. He again made a representation and considering the same he was re appointed on 15.05.1984 on humanitarian grounds. Lastly the workman was chargesheeted for his serious misconduct and a proper domestic inquiry was held in which the claimant had participated along with his defence assistant and adduced rebuttal evidence. The inquiry officer found the charges proved and proposed the punishment which was accepted by the disciplinary authority. Before acceptance of the same the copy of the inquiry report was served on the claimant giving him the chance of filing his reply. It has further been pleaded that the present claim is barred by limitation for being raised after 18 years of the alleged illegal termination. More over the establishment has been permanently closed by the order of the Hon'ble H C of Bombay and a decision in that regard as taken by the Government of India. Not only that the claimant has already attained the age of superannuation and as such his prayer for reinstatement has become infructuous. Thus, the plea of the claimant that for improper conduct of the domestic inquiry he has been victimized and the order is liable to be set aside is based upon incorrect interpretation of fact and law.

On these pleadings the tribunal by order dated 05.04.2013 had framed 5 issues and directed that issue no.1 shall be heard as preliminary issue.

Being called upon the management examined three witnesses who were the inquiry office, presenting office and the disciplinary authority

who took the final decision. On behalf of the management several documents were exhibited and those documents include the order of transfer dated 03.01.1990, which was disobeyed leading to charge sheet dated 04.01.1990. Management has also filed the charge sheet, the orders appointing the inquiry officer and Presenting Officer, the letter correspondence made with the claimant and the proceeding of the inquiry including the inquiry report, order of the disciplinary authority etc.

The claimant examined himself as WW1 and filed certain documents marked exhibit WW1/1 to WW1/3 and WW1/4 (colly containing 17 pages). All these documents include the different correspondences made by the claimant with the management and the certified copies of the proceeding pending before the Industrial Tribunal Ghaziabad, disputing the alleged delay as raised by the management.

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 he was given opportunity to engage a defence assistant and he did so. Copies of all the documents proposed to be proved were served on him. He cross examined the department witnesses and examined himself as a witness. His presence and participation during the inquiry was acknowledged by him by putting signature in the daily proceeding held. The plea of the claimant that the documents demanded by him were not supplied is wrong. During the inquiry, the demand for supply of the production report was denied as not relevant for the inquiry. He further argued that the claimant during his cross examination has clearly admitted about his active participation in the inquiry till the final order was passed by the disciplinary authority. Hence he submitted that there is no infirmity in the domestic inquiry proceeding and order, and the tribunal cannot interfere with the managerial decision. The preliminary issue be decided in favour of the management.

In the counter argument the learned AR for the claimant submitted that during the entire inquiry proceeding the procedure laid down in the standing order 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. At this stage the merit and credibility of the evidence can not be gone into. He pointed out that the claimant was an illiterate worker not conversant with the procedure of the inquiry.

Hence Principles of Natural Justice requires that the inquiry officer at the beginning should explain the procedure to the charged employee. But in this case as admitted by the inquiry officer, the same was not complied. The said non compliance makes the inquiry proceeding illegal.

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, except examining the fairness adopted in conduct of the inquiry cannot go to examine the merit of the evidence collected during inquiry. Once the inquiry is held to be conducted fairly, under the scope of section 11A the tribunal has wide power to examine materials establishing the prima facie liability of delinquent employee. Thus 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, or it was conducted fairly giving proper opportunity to the charged employee to set up his defence.

In this case as seen from the documents the departmental inquiry against the claimant was initiated after a show cause notice was served on him which was not found satisfactory. The claimant has pleaded that from the very beginning he was disputing the procedure adopted in the inquiry but the management without paying any heed to his objections exercised the power malafidely. Such malafide action of the management amounts to victimization of the claimant and makes the inquiry vitiated. 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 Shrivastav (2002) I 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 presence of the claimant and his defence assistant and the claimant by putting his signature on the daily proceedings acknowledged the same. 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 having knowledge of the proceeding opted to examine himself and proved certain documents. If at all he was not satisfied with the procedure adopted, he could have

raised objections in that regard in the said proceeding. Or else he could have challenged the procedure adopted and the authority of the Inquiry Officer, Presenting Officer. 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. It is worth mentioning that the claimant during cross examination has clearly admitted that the opportunity of engaging the defence assistant was given to him and he along with his defence assistant were attending the proceeding on each date. He has also admitted that after reading and understanding the contents of the daily proceedings of the inquiry, he was putting his signatures. He has also admitted during cross examination that all the documents were supplied to him except the copy of the production report, which the management has replied as irrelevant for the inquiry.

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 **06.12.2022** for argument on the proportionality of the punishment awarded.

Presiding Officer  
17<sup>th</sup> October, 2022.