

**BEFORE CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM-
LABOUR COURT NO-II, NEW DELHI**

I.D. No. 253/2019

Sh. Rajender Kumar, S/o Sh. Bhola Ram,
R/o RZ- 13, KG/F, J-Block, Gali No. 62.
West Sagarpur South, West Delhi-110046.

Versus

1. **Oriental Bank Of Commerce,**
HR Department, Head Office,
Plot No. 05, Institutional Area, Sector-32,
Gurgaon-122001.

2. **The Chief Manager,**
Oriental Bank Of Commerce,
Branch At: 26-B, Choti Mandi Janakpuri,
New Delhi-110058.

Order dated: 18.07.2024.

This order shall dispose of the preliminary issues framed by this tribunal on 07.07.2024 to the effect whether the domestic enquiry was conducted against the claimant properly following the principle of natural justice.

Before parting any opinion regarding the issue that is necessary to state the brief facts regarding the claim filed by the claimant. On 20.11.2019 refernce has been sent by Sh. Remis Tiru, Deputy Chief Labour Commissioner (C) New Delhi, with the following words:

*“Whether the action of the
management of Oriental Bank of
Commerce in terminating the services
of the workman Sh. Rajender w.e.f.*

31.05.2007 is just, fair and legal? If not what relief the workman concerned is entitled to and from which date?

Workman in his statement of claim, claim to have been working in the respondent w.e.f. 11.09.1985 at the post of Clerk cum Cashier as permanent employee at the last drawn salary of Rs. 13859.70/- per month. Some financial misappropriation was taken place in the bank of the respondent on 05.06.2004, 08.06.2004, 15.06.2004 and 19.06.2004 pertaining to the alleged embezzlement which was thrust upon him while the some other hire/management was involved in that. Respondent has given the charge-sheet dated 11.05.2005 to the petitioner containing the false, frivolous, baseless allegation of misappropriation of money and subsequently suspended the petitioner in utter violation of the principle of natural justice. No hearing took place to prove the charges against the claimant rather the respondent became judge of its own case. He was also not supplied with relevant departmental rules, copy of the statement of persons recorded behind his back. Moreover he was not allowed to bring defense assistance/trade union representative to defend himself in the enquiry proceedings. In between an FIR was lodged against him and he has faced a trauma and ultimately was acquitted by the session court vide order dated 19.05.2016. He submitted that the enquiry officer has given one sided decision in favour of the respondent and held petitioner the guilty of offence of embezzlement vide order dated 31.05.2007. Ultimately he was dismissed. He has filed this claim for his illegal termination.

Respondent has filed the WS and stated that the workman has been afforded sufficient opportunity to defend himself in the charge-sheet issued to him for his alleged mis-conduct or embezzled in the amount deposited by the custom. Mr. Chanchal Banerjee, Manager (HR), Regional Office, Delhi was appointed as the Presenting Officer in the enquiry. The Enquiry Officer has conducted the enquiry on various dates i.e. 21.03.2006, 04.04.2006, 25.04.2006, 05.05.2006 and 02.08.2006 in which the workman had participated and the management had produced the witness namely Mr. G.S Tyagi as a witness who had deposed the enquiry proceedings as management witness. It was deposed by Mr. Tyagi that he was working at the relevant time at the Janak Puri Branch as Hall Incharge. He had acknowledged and admitted the signatures on the receipts (counter foil) which were issued by the workman in token of the receipt from the

customers. The said receipts were also exhibited by him during the enquiry. The enquiry proceedings were held in a just and fair manner in which every opportunity was given to the delinquent employee. Disciplinary authority of the Oriental Bank of Commerce vide its speaking order dated 31.05.2007 imposed the punishment of the removal from service with superannuation benefits. His appeal was also dismissed and FIR was also lodged.

After framing the issues, both the parties had led the evidence to this effect. Management had examined one Mr. Chanchal Banerjee as MW1. He had deposed the fact as mentioned in the enquiry proceedings. He had relied upon the proceedings of the above said date 21.03.2006, 04.04.2006, 25.04.2006, 05.05.2006 and 02.08.2006, document Ex. MW1/1 i.e. Aadhaar Card, Ex. MW1/2 i.e. departmental enquiry of 21.03.2006, Ex. MW1/3 departmental enquiry of 04.04.2006, Ex. MW1/4 i.e. departmental enquiry of 25.04.2006, Ex. MW1/5 i.e. departmental enquiry of 05.05.2006, Ex. MW1/6 i.e. 02.08.2006. He further relied upon the finding of the Enquiry Officer Ex. MW1/7.

Witness was cross-examined where he had been asked to peruse the counter foil marked as MD-PK3 during the enquiry as he did not remember if there was such manipulation on the date mentioned in the counter foils. He admitted that he had seen the advocate notice dated 25.03.2005 served on the bank at the instance of the advocate of one Mr. Pawan Kumar which was Ex. as MD-PK2 during the enquiry. He admitted that in the document it was mentioned that the sum of Rs. 24,000 was deposited in cash by Mr. Pawan Kumar on 11.06.2004. He admitted that on 31.03.2005 a letter was written by the branch manager Janakpuri branch to the regional office of the respondent. In the said document there are some over-writings with regard to the date and thus, he cannot confirm the contents. He cannot say if the brother of Kavita Bhasin had stated in his letter dated 01.07.2004 that he deposited Rs. 48,000/- on behalf of his sisters on 15.06.2004. He cannot say if there was any previous allegation of misconduct against the claimant since the domestic enquiry does not look into his past conduct; in rebuttal, claimant had examined himself. He had relied upon various documents. Ex. WW1/1 to Ex. WW1/25. He had been asked the number of about the exhibited document regarding the enquiry. He admitted that enquiry proceedings bear his signature.

Counsel of the workman has accordingly argued that enquiry is perverse, since none of the complainant has been called by the enquiry officer to buttress the

fact that ever he had deposited the amount on the particular date and had sent a person. His further argument is that he has been acquitted honorably by the session court vide order dated 19.05.2016 and in the proceeding therein session court found the witness not praiseworthy. Even, lower staff of the bank has not been called. He has unblemished record. There is a different version of the complainant. Sh. Pawan Kumar, Ld. Lawyer had written the letter to the bank that he has deposited the amount of Rs. 24,000 in the bank on 11.06.2004. While, on 11.06.2004, he was on leave and the branch officer against who had made complaint for drinking the liquor in the office time has blamed him. His version in the examination in chief remains unchallenged, unrebutted. Therefore, enquiry conducted by the Enquiry Officer is perverse and liable to be set-aside.

Per contra Sh. Rajat Arora, Ld. AR of the respondent has stated that basic principle conducted in domestic enquiry is that sufficient opportunities has been given to the claimant as he has admitted that he has been furnished charge-sheet and he had participated in all the proceeding therein. His defense is in the enquiry that till the criminal court decide the case the enquiry will be withhold. Enquiry Officer had examined the witness of the bank to substantiate the charges. Moreover it has been submitted by the counsel of the respondent that witness conduct is not clean as depicted, he has been convicted by the Metropolitan Magistrate and on appeal he was given benefit of doubt. Standard of proof in domestic enquiry as well as the criminal trial is different. In the domestic enquiry burden of proving the charges for preponderance of evidence while the burden of proving the offence in criminal trial is beyond reasonable doubt. He is given only benefit of doubt under criminal trial.

I have heard the argument at bar. No doubt standard of proving the enquiry and criminal trial are two different aspects. Burden of proving the criminal trial is not equated with the burden of proving the article of charges framed against the delinquent. The reference to the criminal trial is inconsequential, however, it gain importance when the enquiry itself marred of bias. Admittedly there was no lower rank official have been examined by the Enquiry Office who was sitting along with side of the claimant or who used to work in place of the workman when he was on leave. In the present case there is a difference of date mentioned by the advocate of the complainant Sh. Pawan Kumar who had stated that cash was deposited on 11.06.2004, while on that date claimant was admittedly on leave, how could he sign, nothing has been mentioned.

Moreover it is the duty of the Enquiry Officer to call at least some of the complaint. Complainant was stated its complaint that he had given the amount to deposit to the cashier sitting there at a particular time or any of the complainant has sent other person to deposit the cash in his account and when he had returned, but, Enquiry Officer to his wisdom had not chosen any person to be examined. If any person affix the stamp and got signature resemblance to the petitioner on the receipts and thrust the same upon the cashier working there, therefore at least one of the complaint should be there.

Domestic enquiry held by the management to the delinquent official can be vitiated by the judicial authority on the ground that the proper hearing had not been given or it has the perversity. The meaning of the word perversity is “*showing a deliberate and determining desire to behave in a way that most people think is wrong, unacceptable or unreasonable*”.

Here, in the present case if we assess the fact in the light of the above discussion, domestic enquiry conducted by the management seems to be perverted as it was not acceptable to the most of the people. By not examining any of the complainants or not relying the contrary evidence which was given by the advocate regarding the date of deposit, constitute that the Enquiry officer behave in a different manner.

In view of the above discussion in hand, the domestic enquiry is held to be vitiated as it is per versed. Order accordingly.

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