

BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.
208 ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-
110002.

ID.NO. 138/2012

G. K Mirdha

.....Claimant /Workman.

Versus

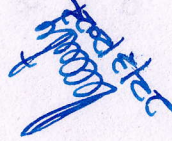
M/s Air India Limited

...Management. .

ORDER DATED 22nd March, 2022

This order is intended to decide a preliminary issue framed by order dated 15.05.2013 regarding the legality and fairness as well as adoption of principles of natural justice, in the domestic enquiry conducted against the workman/ claimant

The facts leading to the filing of Industrial dispute and relevant for answering the preliminary issue are that the claimant G.K Mirdha had joined the service of Indian Airlines on 8.03.1979 as a helper in ground support department . He was confirmed in service by order dated 23.05.1980. When he was performing his duties with utmost sincerity, his eligibility was recognized and in due course he was promoted to the post of Senior Helper and head Helper. However, in the year 2000 he remained absent in duty for some reasons beyond his control and appeal had been made to the higher authorities the same was considered and he was reappointed on 03.09.2003. To his bad luck, he was going a tough time from 2004 to 2007 during which his wife and one son became ill and another son also suffered from mental illness. He also lost his mother. Being the only person in the family to take care of the members he was forced to take leave on intervals. In the year 2007, he himself suffered an accident due to fall from the staircase and lost his mobility. Though , he was duly intimating about his leave to the authorities, on 19.09.2007 a chargesheet was issued to him by the Deputy General Manager alleging unauthorized absent of 383 days during the period from 16.03.2006 to 31.08.2007. He filed reply to the chargesheet, but the management decided to initiate a departmental enquiry. Though the claimant had participated in the enquiry, no proper and reasonable opportunity was given to him to defend his case. On the contrary, he was made to believe that if he admits the charges a lenient view will be taken. With that belief the claimant did not contest the departmental enquiry vigorously and the Enquiry officer submitted his report holding the charges are proved. He was then called upon to showcause as to why the punishment proposed shall not be imposed. The showcause submitted by him not accepted and the Disciplinary authority by the order dated 11.07.2008 passed the order of termination on the ground of unauthorized absent. The compelling circumstances, leading to his absent from duty was never considered by the enquiring officer or the Disciplinary authority.



The said order laid the workman jobless making him to starve with the liability of a big family. He then, served a demand notice and raised an Industrial Dispute. The conciliation since failed, the appropriate government refers the matter to this Tribunal to adjudication

The management filed written statement admitting that the claimant was initially appointed as a helper, on later stage confirmed in the post and given the promotion to the post of head helper. But his service record was not at all good. In the past on eight other occasions between 1987 to 1998, he was proceeded for disciplinary action and punishments were imposed. In all the previous occasion allegation against him was unauthorized absent But the enquiry under challenge the claimant had remained absent from duty for 383 days during the year 2006 to 2007. Thus, charge sheet was duly served on him and the claimant submitted his reply to the chargesheet on 06.10.2007. The said reply being found unsatisfactory an enquiry was conducted and due opportunity was granted to the claimant to set up a defense. But the claimant admitted his guilt and did not choose to adduce defense evidence. The enquiry officer submitted his report holding the charge proved. 2nd Showcause notice was served on the claimant to which he also submitted a reply. But the reply was not satisfactory and considering the previous instances of unauthorized absence, the disciplinary authority passed the order dismissing him from service.

On these rivals pleading 3 issues have been framed. Issue no. 1 has been taken up on consideration as preliminary issues. During the hearing of preliminary issue the claimant testified himself as WW1 and subjected to cross examined in part by the management. AT that stage, the claimant died and his legal heirs was substituted. One of his son testified as WW2. On behalf of the claimant several document has been filed to establish for the alleged period of absence the claimant was going through a tough time on medical issues which prevented him from attending the office and the fact was duly intimated to the authorities. On the other hand the management examined one of its officials as MW1 who proved a series of document As MW1/1 to MW1/7. These documents include the letter of appointment, letter of confirmation the charge sheet and the domestic enquiry proceedings.

It is a settled principle of law that the Tribunal authorized to decide the dispute relating to punishment inflicted on a workman pursuant to a domestic enquiry is required to be considered at the 1st instance if the domestic enquiry was held properly and same is valid. The departmental enquiry being a quasi judicial proceeding the same as per the different pronouncement is required to be done in an unbiased manner following the principles of natural justice.

During course of argument on behalf of the claimant it was submitted that the enquiry officer in a hasty manner concluded the enquiry and he was not allowed to set up a proper defense. On the contrary, he was made to understand that the admission of guilt will lead to a lenient punishment. Placing reliance in

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the case of Allahabad and others Vs. Krishna Narayan Tiwari reported in AIR 2017 Supreme Court page 330, it is submitted that the order of Disciplinary authority is an outcome of non application of mind and for that reason the enquiry has been vitiated for violation of the principles of natural justice. It was also argued that the claimant was working as a helper having least knowledge about the procedure of domestic enquiry . The enquiry officer has never explain the procedure to the claimant at the beginning . The counter argument of the management is that the claimant had actively participated in the enquiry and the domestic enquiry clearly shows that the claimant had at every stage had replied to the charge, to the showcause notice etc. Not only that all the relevant document was supplied to him and he was called upon to engaged a defense assistance. On behalf of the management the copy of the Disciplinary enquiry proceeding, copy of the charge, order passed by D. A have been placed on record.

The workman was cross examined by the management while giving evidence for the preliminary issue hearing. He was confronted with his signature taken in the domestic enquiry proceeding, which he admitted. Thereby, he clearly admitted to have participated in the domestic enquiry and receipt of the copies of the document relied by the management. The departmental enquiry proceeding also shows that he was offered the opportunity to engage a defense counsel and to examine the defense witnesses to which he denied. The son of the claimant examined as WW2 has denied his knowledge about the steps taken and chances offer to his father during the enquiry.

Though much argument was advanced with regard to the circumstances preventing the claimant from reporting to duty and the plausible cause of his absence from duty, it is not held proper to adjudicate upon the same at this stage when the purpose of preliminary issues hearing is to examine whether the domestic enquiry was conducted fairly or not.

But from the totality of the evidence available on record it clearly appears that Domestic enquiry was conducted against the claimant workman following the procedure and principles of natural justice and the same is cannot be held vitiated.

The issue no. 1 is accordingly decided against the claimant and in favour of the management. Call the matter on *11-05-2022* for argument to be advance by both the parties on the proportionality of punishment inflicted.

Presiding Officer
March 22, 2022