Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 17/15

Date of Passing Award- 28.02.2022

Between:

Shri Ved Prakash, workman
S/o Shri Mallu Singh,
R/o:- H. No. 392/3, Uttam Nagar,
Indirapuram, Near Namita Public School,
T.P. Nagar, Meerut, U.P.
Meerut (U.P)

Versus

The Sr. Divisional Manager,
LIC of India, Divisional Office,
Prabhat Nagar,
Meerut (U.P). Management

Appearances:-

Shri Gopi Chand (A/R) — For the claimant.
Shri Rajiv Katyani (A/R) — For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of LIC of India, Divisional Office, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-17012/144/2014 (IR(M) dated 08/12/2014 to this tribunal for adjudication to the following effect.

"Whether the action of the management of Life Insurance Corporation of India, Meerut in termination the services of Shri Ved Prakash Ex-employee vide order dated 29.08.2012 is legal and justified? If not, to what relief the workman concerned is entitled?

As per the claim statement the claimant was initially appointed as a Peon-Group D employee in the management LIC on 22.10.1991. On account of his dedicated services he was promoted to the post of record clerk and working as such till the date of his suspension. When he was discharging his duties diligently, for no fault of him, by order dated 06.12.2003 he was placed under suspension and on 14.06.2004 a charge sheet was served on

him alleging serious misconduct. The allegations against him was that he had delivered some cheques to some fraudulent persons in the Branch Office-II at Ghaziabad in connivance with some employees of that office including an agent duly approved and licensed by the management and thereby created policy masters under some fake policy causing huge financial loss to the management LIC. Being called upon the claimant workman submitted his reply to the charge sheet dated 14.06.2004 and thereafter the inquiry officer and presenting officer were appointed. The inquiry officer commenced the inquiry on 07.12.2004 and concluded the same on 21.03.2006. No instruction was given to the claimant who was the charged employee to submit any notes of written argument. However, the presenting officer submitted a written submissions and the inquiry officer in gross violation of the Principles of Natural Justice submitted his report holding the claimant guilty of the charges. The documents relied upon by the department during the inquiry were never supplied to the claimant. The said inquiry report was served on the claimant on 04.08.2006 calling him to submit his reply to the same. The claimant submitted his reply and comments to the said report on 18.10.2006 wherein it was inter alia stated that fair and reasonable opportunity to set up a defence was not afforded to him which has influenced his legal rights. But his submissions were never considered and on 25.06.2013 a showcause notice was served on him asking as to why the proposed penalty of dismissal alongwith recovery of 62,18,845.47/- shall not be imposed on him to compensate the loss suffered by LIC. On receipt of the same the claimant submitted his reply and showcause on 31.07.2012 stating that the inquiry having not been conducted in a fair manner, the proposed punishment cannot be inflicted on him. It was further stated that he used to obey and comply the direction of the Branch Manager and other superiors who were in possession of the computer password and he having no other access to the computer had not committed any misconduct as alleged. But the higher management of LIC in violation of the Principles of Natural Justice and ignoring all the settled Principles of law passed the order on 29.08.2012 dismissing him from service with a direction to recover 62,18,845.47/- from him and also directed that the period of suspension from 06.12.2003 till the date of order on 29.08.2012 be treated as "dies non" which means the claimant had not worked for those days. The claimant being aggrieved had preferred a departmental appeal which too was rejected by order dated 09.01.2013 and the said authority confirmed the penalty awarded by the disciplinary authority. The claimant thereafter made a representation to the chairman of LIC but that was not decided in his favour. Having no other efficacious remedy the claimant approached the conciliation officer by raising the Industrial dispute at Dehradun. A conciliation proceeding was initiated and the officials of the management attended the same. But the conciliation failed and the Assistant Labour Commissioner submitted a failure report on the basis of which the appropriate government referred the matter for adjudication. It has been stated by the claimant that the management is having a Central Office at

Mumbai and supported by seven Zonal Offices and each zonal office has eleven divisional offices under its jurisdiction. Under a division there are as many as 27 Branch Offices. The said Branch Offices at the end of each month perform reconciliation of all the policies, transfer in and transfer out are done at the Branch of his level and data is forwarded to the division officer where the same is feed into the computer in respect of the policies belonging to that division which later merges with the record of other division. The details of the left over policies not belonging to the particular division are submitted to the zonal office by way of a return called D-return. These left over policies are then sent to the Central Office Mumbai for conciliation and cross checking. The claimant has thereby stated that there being a strict check and balance method it was not possible on the part of a record clerk at the branch level to manipulate the records. The allegation leveled against him and the charges framed were baseless. In this claim petition the claimant has further stated that the inquiry officer and disciplinary authority in a biased manner passed the order and though the charges were not proved strictly against him, the punishment disproportionate to the charge was imposed. Thus, the claimant has prayed to quash the order of dismissal dated 29.08.2012 and direct the management to reinstate him with all consequential benefit and also set aside the order for recovery of Rs. 62,18,845.47/- and grant any other relief which would deem fit in the circumstance.

Being noticed the management LIC appeared and filed WS stating that section 23(1) of the Life Insurance Corporation Act empowers the corporation to employee such number of persons as it thinks fit to enable it to discharge its function. Section 48(1) of the Act empowers the Central Government to carry out the purposes of the Act and sub section 2 of section 48 empowers the central government to make rules. The corporation in exercise the power vested in it by section 49(2) made regulations known as LIC staff regulation 1960 which provides the terms and conditions of service of it's whole time salaried employees. Regulation 36(1) empowers the appointing authority to initiate disciplinary proceeding and place an employee under suspension. Regulation 39 deals with the penalties to be imposed on the employee on proof of the charge of misconduct.

A disciplinary proceeding was held against the claimant in terms of LIC Regulation 1960 during which he was placed under suspension and after the inquiry the punishment of dismissal from service was imposed on him. But there is a clear conflict between the LIC Act 1956 and the rules made by the LIC which by necessary implications leads to a conclusion that no application under the Industrial Dispute Act 1947 is maintainable in respect of an employee under the Act of 1956. Thus, this tribunal lacks the jurisdiction to adjudicate the dispute referred. The territorial jurisdiction of this tribunal has also been objected as the conciliation proceeding was initiated in Dehradun. So far as the claim of the claimant is concerned it has been stated that 160 policies were transferred to different branches and the

soft copies as well as the hard copies of the policy related documents were required to be sent to the transferee branch. In this case though the hard files of all the 160 transferred policies were received in the respective branches, the soft copies were not received from the transferor branch. The agent handling the policies was pressurizing for expeditious action on the same. It was noticed that the policies transferred to the transferee branch has already been sent but the said transferee branch only received the policy docket without any intimation letter to follow it up. A correspondence was made in this regard by the transferee branch to the transferor branch and on further inquiry it was noticed that no such transfer was ever made by the transferor branch in respect of those 160 policies to four different transferee branches. When the agent was questioned about the same it came to light that by a criminal conspiracy such manipulations were done and the agent Harender Kumar immediately deposited Rs. 1500,000/- in cash in the account of the respondent corporation. A complaint was made to the CBI and a departmental inquiry was initiated against the claimant as he was found actively involved in the conspiracy and fraudulent transaction. The CBI also filed charge sheet against the wrong doers including the present claimant and the trial is in progress. During this inquiry it was revealed that the said 160 transferred policies never existed and were all fake policies created by the Agent Harender Kumar in connivance and conspiracy with the claimant and other staff of LIC. It was revealed that the claimant had misused his official position with malafide intention which amounts to misconduct and such action of the claimant caused huge financial loss to the respondent corporation. The domestic inquiry against the claimant was conducted in a very fair manner and concluded on 21.03.2006. During the inquiry all the documents were supplied to the claimant and opportunity was granted to him to setup his defence. The claimant was served with the copy of the inquiry report and the notice to showcause was served on him. The showcause filed by him was not satisfactory. Hence, the punishment was imposed. The appellate authority found no merit in the departmental appeal and the representation to the chairman was also rejected. The management has thus, explained that the punishment imposed on the claimant was proportionate to the charge of misconduct.

The claimant filed replication challenging the stand taken by the management and reiterating the claim made in the claim petition.

On the rival pleadings the following issues were framed by order dated 09.03.2016 for adjudication.

ISSUES

1. Whether departmental enquiry conducted against workman Shri Ved Prakash is just, fair and proper? If so its effect?
2. Whether the action of the management of LIC, Meerut in termination the services of Shri Ved Prakash is legal and justified? If so its effect.
3. If not, to what relief the workman is entitled to and from which date?

This tribunal passed an order directing that the issue no. 1 with regard to the fairness of the domestic inquiry shall be heard as a preliminary issue. The management was called upon to adduce evidence to prove that the domestic inquiry was conducted following the Principles of Natural Justice. On 18.10.2016 a last opportunity was given to the management for filing of affidavit. But no affidavit was filed and the evidence for the management was closed. The claimant also expressed its intention not to adduce any evidence on the preliminary issue and the matter was posted for argument. Thereafter both the parties filed their written synopsis of the argument and the tribunal by order dated 02.05.2017decided the preliminary issue in favour of the claimant holding that the inquiry was not conducted in a fair manner following the Principles of Natural Justice. However, in that order liberty was granted to the management to adduce evidence in order to prove the charge. Again the proceeding suffered several adjournments and ultimately the right of the management for adducing evidence was closed. Taking advantage of the situation the claimant also denied to adduce an evidence and the same was closed by order dated 08.03.2019. After that opportunity was granted to both the parties to advance oral argument and file written notes of argument if any. But surprisingly neither party advanced oral argument nor filed written notes of argument.

Since, the preliminary issue has already been decided by this tribunal holding that the inquiry is vitiated for not following the Principles of Natural Justice, the management was called upon to adduce evidence to prove the charge. 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 disciplinary proceeding is required to consider at the first instance if the domestic inquiry was held properly and the same is valid. The departmental inquiry being a quasi judicial proceeding as per different pronouncements is required to be done in an unbiased manner following the Principles of Natural Justice. In the case of State Bank of Bikaner and **Jaipur vs. Nemichand Nalyawa** the Hon'ble Supreme Court have held that the courts will not act as an appellate court and reassess the evidence laid in a domestic inquiry nor interfere on the ground that another view is possible on the materials on record. In the case of **B. C Chaturvedi vs. Union of India reported in AIR 1996 SC 484** the Hon'ble Apex Court have held that the disciplinary authority is the sole judge of facts. Adequacy of the evidence or reliability of evidence cannot be permitted to be canvassed before the tribunal once the domestic inquiry is held to be conducted fairly. But the position is otherwise when the domestic inquiry is held vitiated for not following the Principles of Natural Justice.

Here is a case where the preliminary issue has already been decided in favour of the workman with a finding that the same was not conducted fairly. The management though called upon has failed to adduce evidence to prove the charge. In such a situation the tribunal has no other option than

come to hold that the order of dismissal and other actions passed against the claimant is illegal and not sustainable in the eye of law.

Here the claimant has been awarded the punishment of dismissal from service. There is also a direction that the period of suspension be treated as such and an amount of Rs. 62,18,845.47/- shall be recovered from him. There is no evidence before this tribunal if any amount has been recovered and if the claimant has not yet reached the age of superannuation. No oral or documentary evidence is available on record. In such a situation the normal order of this tribunal would have been for reinstatement of the claimant with back wages. But it cannot be lost sight of the fact that several documents including the domestic inquiry proceeding were placed on record but could not be proved by the management. Not only that the allegation leveled against the claimant is a clear case of loss of confidence and he is now facing a criminal trial which is evident from the pleadings of the parties. The Hon'ble Supreme Court in the case of **Air India Corporation vs. V. A. Rebflow and another reported in AIR 1972SC 1343** and in the case of **Indian Airlines vs. Prabha D Kanan** decided in appeal **(CIVIL) 4767 of 2006,** have held that the management has the power to dismiss an employee for loss of confidence, without conducting a domestic inquiry.

> In the case of workman of **M/s Firestone Tires and Rubber company of India vs. Management and others, 1973 SCR(3)587** the Hon'ble Supreme Court have held that:-
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> > "The tribunal u/s 11A can consider the question of guilt as well as of punishment. It can also alter the punishment imposed by the employer."

While discussing the judgment of **workmen of Motipur Sugar Factory Pvt. Ltd. vs. Motipur Sugar Factory Pvt. Ltd., 1965SCR(3)588** the Hon'ble Supreme Court in the case of Firestone referred supra have further held:-

> "When an employer had held no inquiry as required by the standing order, it was not open to him to adduce evidence before the tribunal for the first time and justify the order of discharge. This contention was rejected and it was held that if the inquiry was defective or no inquiry had been held, as required by the standing order, the entire case would be open before the tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. There is no provision either in the Industrial Employment (Standing Order) Act 1948 or in the Industrial Dispute Act that an order of dismissal or discharge is illegal if it is not recorded by a proper and valid domestic inquiry. Therefore, the contention that such an inquiry being illegal, the tribunal has now u/s 11A no alternative but to order reinstatement could not be accepted. Moreover, the industrial

> dispute act cannot be differently applied to the employees who are governed by the Standing Order Act and those who are not governed by it. The expression "materials on record" occurring in the proviso to section 11A cannot be confined only to the materials which were available at the domestic inquiry. On the other hand the materials on record in the proviso must be held to refer to the materials on record before the tribunal. They take in (i) the evidence taken by the management during the inquiry (ii) the above evidence and in addition any further evidence led before the tribunal (iii) evidence placed before the tribunal for the first time in support of the action taken by the employer. The expression fresh evidence has to be read in the context in which it appears. The tribunal for the purpose of determining the question of misconduct or punishment or leave to be granted to the workman has to act only on the basis of the materials on record before it and cannot call for fresh evidence as an appellate authority can normally do."

In Para 40 of the said judgment of Firestone referred supra the Hon'ble Supreme Court after analyzing all earlier judgments have further held that before imposing the punishment an employer is expected to conduct a proper inquiry in accordance with the provision of Standing Order, if applicable and Principles of Natural Justice. The inquiry should not be an empty formality. When a proper inquiry has been held by an employer and the finding of the misconduct is plausible conclusion flowing from the evidence, adduced at the said inquiry, the tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the finding arrived at in the inquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide. The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no inquiry has been held or after the inquiry conducted by the employer is found to be defective.

In this case by order dated 02.05.2017 this tribunal has already formed an opinion about the defects in conduct of the domestic inquiry and found the same unacceptable. That means there is no material before this tribunal to adjudge the legality of the punishment inflicted by the management on the claimant workman. As has been observed in the preceding paragraph there is no material before the tribunal to believe that the claimant is liable for misconduct. In such a situation the punishment inflicted against him is liable to be set aside. But at the same time it is held that this being a case of loss of confidence and there being no evidence that the claimant is still within the age limit to serve, it is directed that he cannot be reinstated into service with back wages. Similarly the charge against him since has not been proved the amount of Rs. 62,18,845.47/- cannot be recovered from him. The

punishment inflicted pursuant to the domestic injury is hereby setaside. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The punishment inflicted on the claimant pursuant to the domestic inquiry is hereby set aside. The management is directed to pay a lumpsum compensation of Rs. 10,00,000/- to the claimant without interest in lieu of reinstatement, within 3 months from the date when this award would become enforceable, failing which the amount shall carry interest @ 9% per annum from the date of this award and till the final payment is made. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
28th February, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
28th February, 2022.