

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

ID. No. 36/2013

ORDER DATED:-14/07/2022

Shri Umesh Chandra,
S/o Shri Suresh Chandra,
Quarter No. 24, Rajkiya Adarsh Colony,
Moradabad (U.P)

Workman

Versus

1. Deputy General Manager,
State Bank of India,
Zonal Office, 148, Civil Lines,
Bareilly (U.P)
2. Chief Manager,
State Bank of India,
Region-II, RBO, Civil Lines,
Moradabad (U.P)
3. Branch Manager,
State Bank of India,
Main Office, Katcheri Road,
Moradabad (U.P)

Management

ORDER:-

This order is intended to decide a preliminary issue framed by order dated 20.03.2014 regarding the legality and fairness of the domestic inquiry conducted against the claimant workman.

The facts leading to the filing of the industrial dispute and relevant for answering the preliminary issue are that the claimant Umesh Chandra was appointed in the management bank as an Assistant on 26.02.1993 and was confirmed in Banks service on 07.09.1993. In the year 2007 he was posted in the Moradabad Branch of the Respondent Bank and working as the Single Window operator. On 14.07.2007 without serving any notice to showcause he was placed under suspension vide Banks letter No. RBO-11/75 dated 14.07.2007. Not only that he was attached to another Branch at Bijnor illegally. In the letter of suspension it was mentioned that he will remain attached to Bijnor Branch during the period of suspension which goes against the service conditions of the Bank employees laid down in Desai Award, Bipartite Settlement and the memorandum of settlement dated 10.04.2002. During the period of suspension the Bank lodged FIR against him on 29.08.2007 by engaging one Ajay Kumar Rastogi on some flimsy grounds. The claimant moved the Hon'ble High Court of Allahabad and obtained an interim order of stay against his arrest by police. The said case is still pending. During the period of suspension the management did not pay

him subsistence allowance or salary for which he made several representations. Finding no other way the claimant raised an industrial dispute before the Assistant Labour Commissioner (Central) Dehradun wherein all the attempts made for conciliation failed. Having no other efficacious remedy the Assistant Labour Commissioner reported the failure to the appropriate government which in turn made the present reference. During the pendency of the conciliation proceeding the Bank gave a letter to the authorized representative of the claimant about initiation of the departmental proceeding. But no charge was ever served upon the claimant upto 16.05.2008 though much prior to that the domestic inquiry was stated without serving the charge sheet on the claimant. During the inquiry the charge sheet was served on the applicant to his prejudice and no proper opportunity was granted to him to defend his stand. Though the claimant was placed under suspension and the domestic inquiry was in progress the bank never paid him subsistence allowance and a complaint was made to the Assistant Labour Commissioner claiming Rs. 210,000/- as the arrear subsistence allowance. But the bank deposited only Rs. 96480/- before the ALC as arrear subsistence allowance. The claimant has thus stated that the entire domestic inquiry was conducted without serving the charge on the claimant and without calling the showcause from him. The Principles of Natural Justice was denied and no opportunity for setting up the defence was allowed. The report of the inquiry conducted one sided was submitted to the disciplinary authority who without application of mind accepted the same and inflicted the punishment of dismissal from service. All these actions of the management were taken when the conciliation proceeding was pending before the ALC. Being aggrieved by the punitive action of the management the present claim has been filed, wherein it has been pleaded that disciplinarily authority passed the order with a preoccupied mind and imposed a punishment disproportionate to the alleged act of misconduct. Hence it is a fit case for interference by the tribunal to set aside the impugned order holding that the domestic inquiry was not conducted fairly.

The management bank on the contrary submitted that the service condition of the Bank employees are governed by the Shashtri Award and Desai Award and as well as in terms of the Bipartite agreement. The Ld. A/R for the bank while filing the WS has stated that the claimant is guilty of suppression of material facts. It has been stated that the claimant was working as the Single Window operation at the Bank's branch Muradabad. Complaints were received on 25.06.2007 from one customer named Ms. Shivani Singh who alleged about unauthorized withdrawal of huge amount from her savings bank account. After a preliminary investigation at the branch level it was revealed that many fraudulent withdrawals were made from different accounts by the claimant Umesh Chandra, the assistant working as the single Window operator. On interrogation the claimant on 10.07.2007 admitted about the fraudulent withdrawal of money from 14 different accounts of the customers aggregating to 14,39,600/-. He had even withdrawn more amount and on periodical intervals deposited the same. In

view of the serious nature of the allegation and that the claimant had breached the trust of the bank he was immediately placed under suspension by order dated 14.07.2007 and his headquarters during the suspension was fixed at Bijnor Branch for drawing the subsistence allowance. The order of suspension was served on the claimant on 26.07.2007. One FIR was lodged at the Local police station by the chief manager Shri Ajay Rastogi in his official capacity alleging fraud committed by the claimant. After service of the suspension order the departmental inquiry was initiated but the claimant did not cooperate for the inquiry leading to delay in the process. Before serving of the charge sheet a showcause was called for by letter dated 06.12.2007. Since the claimant refused to accept the same it was sent by post on 03.01.2008 and delivered on the next date at his address. No reply was sent by the claimant to the said showcause notice. On 13.02.2008 the charge sheet was sent to the claimant by the register post as well by UPC in his 2 separate addresses and those were delivered too. But the claimant did not reply to the charge sheet. The disciplinary authority decided to proceed with the departmental inquiry. During the inquiry several intimations were sent in his recorded address and the notice of inquiry was also published in two local newspapers on 09.09.2009. The claimant since did not cooperate the inquiry was closed and the report of the inquiry was sent to the administrative officer of the Bank as well as to the claimant by the registered post and under UPC. Since the claimant did not file any showcause to the inquiry report the disciplinary authority passed the order dated 23.02.2010 dismissing him from service and the said order was dispatched to the Bijnor Branch by post for service. A copy of the order was also sent to the claimant calling upon to showcause as to why the provisional order of dismissal shall not be made final. Since, no reply was received despite service of the same by post the final order of dismissal dated 23.04.2010 was passed and the same was sent in his home address by 2 officials of the Bank. On reaching his residence the officials found him absent to receive the order and thus, again it was sent by post. Thus, the management has pleaded that all precautions were taken to conduct the inquiry fairly following the Principles of Natural Justice and the claim petition is based upon misconceived facts and liable to be rejected.

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 proceeding has been held properly and the same is valid. The departmental inquiry being a quasi judicial proceeding, the same as per the different pronouncements is required to be done in an unbiased manner following the Principles of Natural Justice.

During the hearing on the preliminary issue the claimant/workman examined himself as WW1 and proved certain documents. On the other hand the management examined one of its officers named Vijay Singh as MW1. The inquiry officer who had tendered his affidavit evidence could not be

produced for cross examination and as such his evidence was expunged. The management witness filed a series of document marked as MW1/1 to MW1/-19 and these documents include the charge, the showcause notice, the disciplinary proceeding, the order of the inquiry and order of the disciplinary authority. Similarly the claimant while testifying produced several documents marked in the series of WW1/1 to WW1/11. These documents include several letters written by the customers stating that they have received refund of the amount withdrawn from the account and hence, they have no grievance. The other documents filed by the claimant are the co-representations made by him for grant of subsistence allowance, and copies of different circulars guiding service conditions of the Bank employees.

During cross examinations the claimant admitted that he was placed under suspension on allegation of fraud committed by him and FIR was lodged for the same. But he has stated about his ignorance about the said fraudulent transaction. He emphasized that no charge sheet was supplied to him before initiation of the domestic inquiry and a copy of the same was supplied when the matter was pending for conciliation before the ALC. He has also admitted not to have participated in the domestic inquiry for non service of the original charge sheet.

While denying to the suggestion that full opportunity was given to him for setting up proper defence the claimant/workman further admitted that he opted not to participate in the inquiry. The report of the inquiry officer which has been placed on record clearly shows that at the outset of the inquiry the management gave a list of the witnesses and the documents to be relied upon.

The documents placed by the management on record clearly shows that several attempts were made by the management to serve the charge sheet and showcause notice on the claimant in his recorded address. Somehow or other he managed and avoided to receive the same. The showcause notice since was not answered departmental inquiry started and during the inquiry all attempts by the bank to bring the claimant under participation failed. Hence, no injustice was caused against the claimant during the conduct of the domestic inquiry. The only explanation offered by the claimant is that the original charge sheet was not supplied to him and that is the reason for which he did not participate in the inquiry. But this argument stands contrary to the documents filed by the management which clearly shows that all steps were taken for service of the charge sheet and the showcause notice on the claimant by post. the Ld. Counsel for the bank while filing the office copy of the postal dispatch and UPC argued that there is no evidence to show that the postal dispatch were ever returned undelivered. Since, a presumption of service is always attached to postal correspondence unless there is specific evidence about disruption of communication, the plea of the claimant about non receipt of the charge sheet cannot be accepted. This argument of the Ld. Counsel for the management is found with force.

During course of argument it was submitted on the behalf of the workman that the inquiry officer in a hasty manner concluded the inquiry. He also argued that the account holders had given in writing about their no grievance which was never considered. In support of his contention on behalf of the claimant reliance was placed in the case of **Allahabad Bank and others vs. Krishna Narayan Tiwari reported in AIR 2017 SC Page 330** to argue that when the order of disciplinary authority is an outcome of non application of mind the same is not sustainable. He thereby argued that the entire proceeding of the departmental inquiry stands vitiated for violation of Principles of Natural Justice.

In his reply argument the Ld. A/R for the Bank submitted that the procedure for Departmental Inquiry has been laid down under regulation 6(5) of the regulation governing the service condition of the Bank employees. Though this regulation requires a copy of the article of charge written statement of defence list of documents evidence proving the delivery of the article of the charges, and copy of the order appointing Presenting Officer to be supplied to the delinquent facing the inquiry, the Hon'ble Supreme Court of India in the case of **Debotosh Pal Choudhary vs. Punjab National Bank** have held that fulfillment of some of the requirements of this regulation is purely procedural in character. Unless in a given situation the aggrieved party can make out a case of prejudice or injustice, mere infraction of this regulation will not vitiate the entire inquiry.

The Ld. A/R for the Bank thus, submitted that the workman of this proceeding had intentionally omitted to receive the documents and correspondence though all possible steps were taken for supply of the relevant documents to him. Hence, there is no departure from the procedure, vitiating the proceeding.

The workman was cross examined by the management while giving evidence for the preliminary issue hearing. Therein, he has clearly admitted not to have participated in the departmental inquiry and receipt of the copies of the documents relied by the management. Not only that, during cross-examination he has further admitted that he received the cheque towards subsistence allowance in the same address in which the documents were sent. The circumstances clearly prove that the workman had intentionally avoided to receive the documents and participate in the inquiry which disproves his allegation that fair opportunity was not afforded to him for participation in the inquiry.

On behalf of the management it was also argued that onus is on the workman to show the illegality in conduct of the domestic inquiry proceeding and while placing reliance in the case of **UCO Bank vs. Presiding Officer and another reported in ILR 1999 Delhi 331** he submitted that the domestic inquiry functions being quasi judicial in nature the same is required to be adjudicated basing upon the pleadings of the

parties and the evidence adduced in accordance with the rules of Natural Justice. Therefore no strict adherence of the Evidence Act can be insisted. On the basis of this judgment he submitted that when the management witness was examined for a formal reason during the inquiry, the claimant/workman cannot take objection that no chance of cross examination was afforded to him as he himself opted out of the inquiry.

Thus from the totality of the evidence available on record it clearly appears that the domestic inquiry was conducted against the workman following the procedure and Principles of Natural Justice and the same cannot be held vitiated. The issue No.1 is accordingly decided against the claimant and in favour of the management. Call the matter on _____for argument to be advanced by both the parties on the proportionality of the punishment inflicted.

Presiding Officer