ORDER SHEET

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – Cum – LABOUR COURT, JABALPUR (M.P.)

Date of Order of Proceeding	Order Or Proceeding with Signature of Presiding Officer	Remark
	Case No. CGIT/LC/R/118/2012 **Shri Jamuna Prasad V/S SECL**	
22.03.2024	**Order on Preliminary Issue** None was present for the workman at the time of arguments. Management learned Counsel was present. Heard his Arguments of Management learned Counsel on preliminary issue were heard. Preliminary issue is as follows. **Whether enquiry conducted against workman is just proper and legal ?** Perused records as well. It comes out that the workman, who was a general Mazdoor, was transferred alongwith other 49 workers to Bangwar Mine vide order of management dated 17.05.1994. According to him, he approached the management of Bangwar Colliery to permit him to join his duties and file six applications within 18.05.1994 to 13.09.2000 but management did not issue any joining letter then he filed an application to Director Personnel on 09.11.2005 and to the Chairmen on 24.02.2009 in this respect. Management issued a charge-sheet dated 04/11.05.2011 under Clause-26.24 and 26.30 of Certified Standing Orders which is as follows – **26.24** - Habitual absence without any sufficient reason. **26.30** - Absence without any sufficient reason and without getting any leave sanctioned or over staying while on leave. He submitted his reply on 13.05.2011. Being not satisfied with his reply, management instituted a Departmental enquiry with respect to the charges vide order dated 20.05.2011. It is further the case of workman that the charges were vague, the enquiry officer acted as a prosecutor and conducted enquiry without following the procedure and also in violation	

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	of Principles of Natural Justice. The workman was awarded punishment of removal from service vide order of management dated 25/26.08.2011. The Disciplinary Authority did not issue him show cause with respect to the findings in the enquiry report and also did not supply copy of the enquiry report. Case of management is that the workman has been habitually absenting himself from duty without any reason and without getting any leave sanctioned. His attendance was 120 days in 1991, 74 days in 1992 and 62 days in 1993. He further absented himself without any sufficient reason from 1994 till date of issuing charge-sheet i.e. 04/17.05.2011. He was issued a charge-sheet and after considering his reply on charge-sheet, disciplinary enquiry was ordered against him. The enquiry was held in five dates. The workman participated in the enquiry with his representative both the parties adduced evidence. The Enquiry Officer submitted report of the enquiry holding him guilty of charges of misconduct under Clause 26.24 and 26.30 of Certified Standing Orders. He was awarded punishment of removal from service by Disciplinary Authority. Both the sides have examined themselves on this issue and have been cross examined by their opposite side. The enquiry papers have been filed and proved which are Ex.- M/12, Ex.- M/14. From the perusal of the enquiry proceedings in the light of statements recorded before this Tribunal and record it comes out that the required procedure has been followed by the Enquiry Officer the workman has participated in the enquiry he has cross examined the enquiry witnesses. He has further adduced evidence. It comes out from perusal of enquiry papers and punishment order that the Disciplinary Authority did not provide a copy of the enquiry report to the workman and also did not seek his side to come while considering the findings of Enquiry Officer and the punishment of removal from service of the workman.	

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	Hence, it is established that neither the enquiry report was served on the workman nor was he given any show cause notice before passing the punishment of removal from service. In its judgment in the case **of *Managing Director of ECIL vs. B. Karunakar & Others, 1994 SC 1074***, a five Judges Bench of Hon'ble the Apex Court held that even if the rules do not provide or silent on this point, the Disciplinary Authority is under obligation two supply a copy of the enquiry report and give the employee an opportunity to have his say on the enquiry report before awarding him major punishment. The relevant paragraphs of the said judgment are being reproduced as follows – *The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:* *(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?* *(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?* *(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?* *(iv) Whether the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) will apply to all establishments-Government and non- Government, public and private sector undertakings?* *(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?*	

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	(vi) From what date the law requiring furnishing of the report should come into operation? *(vii) Since the decision in Ramzan Khan's case (AIR 1991 SC 471) (supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990?* *……..* *Hence the incidental questions raised above may be answered as follows:* *(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.* *(ii) The relevant portion of Article 311(2) of the Constitution is as follows: "(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges." Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.* *(iii) Since it is the right of the employee to, have the report to*	

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	defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him. *(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.* (v) *The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the*	

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	report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. …… In the light of this judgment, the two Judge Bench judgment of Supreme Court in ***Uttarakhand Transport Corporation vs. Sukhbeer Singh (2018) 1 SCC 231,*** referred to from the side of management is of no help to them. This judgment can be distinguished on facts as copy of enquiry report was given to the employee with the show cause notice. In the light of these facts and circumstances, it is established that by not supplying copy of enquiry report to the workman and not seeking his say on the enquiry report by the Disciplinary Authority in this case has definitely resulted into prejudice to the workman and hence holding the Departmental Enquiry against Law and Principles of Natural Justice, the preliminary issue is answered accordingly. Since, management has taken a plea that if for any reason Departmental Enquiry is held illegal, the management be permitted to prove the misconduct before this Tribunal. Hence, management is given	

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	opportunity to prove the misconduct by way of oral & documentary evidence. List on date 28.05.2024 for evidence of management on charge. **Presiding Officer**	