

# 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
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**Case No. CGIT/LC/R/63/2009**  
**Davinder Singh V/S Punjab & Sindh Bank**

03.05.2024	<p><b><u>Order on issue no 1-</u></b></p> <p>The issue no 1, taken as preliminary issue has been framed vide order dated April 4<sup>th</sup> 2013 is as follows-</p> <p><b>Whether the departmental enquiry conducted by the Management Bank against the Workman is legal and proper?.</b></p> <p>I have heard the Workman Devender Singh in person and Mr. Arun Patel. Learned counsel for Management on preliminary issue and have perused the record.</p> <p>According to the <b>case of the Workman</b>, as taken by him in his statement of claim, the departmental enquiry conducted was against law and was unjust. It was against the Bipartite Settlement (in short BPS) and the Memorandum of Settlement of 2002. The Workman was not given sufficient opportunity to file his reply and have his say on the charge sheet before the departmental enquiry was ordered against him. The charge sheet was not issued in the light of the Memorandum of Settlement and Circulars issued by the Management of the Bank in this respect. Since there was a First information report registered against the Workman by the Bank levelling the same allegations against the Workman, which are the subject matter of the charge in the departmental enquiry, the Management did not wait the end result of the trial of the case arising out of charge sheet filed by Police after investigation of the said First information report before the competent Court which is in violation of the Bipartite Settlement/Memorandum of Settlement. This resulted into prejudice to the Workman. Further, it is the case of the Workman that he was served our punishment order, which was not signed and was not issued by the Disciplinary Authority. The Enquiry Officer did not</p>	
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	<p>permit the Workman to lead his defense, and the witnesses proposed by the Workman to be examined during the enquiry in his defense were not permitted by the Enquiry Officer. This also resulted into prejudice to the Workman. And other ground taken is that the Presenting Officer was the person who was the member of the team conducting preliminary enquiry and also that the Management treated this enquiry as composite enquiry with the manager of the Bank who was also charge sheeted by the Management Bank for the same charges of Misconduct under Clause 5(J) of the Bipartite Settlement, though both the enquiries proceeded separately, charges were also, framed separately and punishment order was also passed separately. And other ground taken is that the Disciplinary Authority and Appellate authority were changed by the Vigilance Department of the Bank which was not within the powers. Hence, the punishment order and order in appeal also has no force of law.</p> <p><b>Management has come with a case</b> on this point is that there were serious complaints of misconduct committed by the Workman, while working in the Branch by way of fraud, manipulations in FDR's and dishonestly misappropriating the amount. A fact finding team was made to look into the allegations. Based on the findings/report of the fact-finding team, charge sheet on 25/05/2006 was issued to the Workman. He was given opportunity to have his say within seven days and departmental enquiry was ordered when the Workman failed to file his reply within the time given to him without getting the reply of the Workman on the charge sheet because the allegations were very serious. Management has denied that charge sheet was not issued by a Competent Authority, also pleaded that the departmental enquiry was not conducted legally and properly and that the authority passed the impugned order of punishment and decided appeal were not</p>	

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	<p>competent.</p> <p>The Workman has filed his affidavit as his examination in Chief on this preliminary issue. He has been cross-examined by Management. He has filed and proved documents which are Ex. W/1 to Ex. W/92 mainly the enquiry papers &amp; circulars as well RTI documents, to be referred to as and when required.</p> <p>Management has filed the affidavit of its 2 witnesses Rakesh Soni and M.M. Goswami as their examination in Chief. They have been cross-examined by Workman side. This witness has proved the enquiry papers Ex. M/1 to Ex. M/39 to be referred to as and when required.</p> <p>The Workman has filed memorandum of arguments which is part of record. I have gone through the written arguments as well.</p> <p>Though the departmental enquiry has been challenged by the Workman on as many as 82 points mentioned in the written arguments, the main points which require attention of this Tribunal are as follows-</p> <p><b>1- The charge sheet is vague, it was signed by more than one Officers, this the Workman was not given opportunity to have his say on the charge sheet before departmental enquiry was ordered which is in violation of the Bipartite Settlement.</b></p> <p><b>2- The charge sheet is issued by an incompetent authority.</b></p> <p><b>3- The prescribed procedure for enquiry as mentioned in the Bipartite Settlement has not been followed. The Presenting Officer appointed was a member of the fact-finding team hence he was interested in the departmental enquiry and was biased against the Workman.</b></p> <p><b>4- There was a criminal case pending before</b></p>	

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	<p><b>competent Court of law in which the charges were the same as in the departmental enquiry. The evidence as well was the same. In such case, as per clause 19.4 of the Memorandum of Settlement, the departmental enquiry should have been stayed till disposal of the criminal case. This was not done. Hence, caused prejudice to the Workman.</b></p> <p><b>5- The Workman was not given proper opportunity to defend himself during the enquiry. The Enquiry Officer refused to examine his witnesses, resulting into prejudice to his defense.</b></p> <p>As regards <b>the point number one and point number two</b> mentioned above, the Ex. M/1, is the charge sheet dated May 25<sup>th</sup>, 2006, issued by the Zonal Manager. It contains the charges and further provides that the Workman to file his written statement of defense within 7 days from the date of receipt of this charge sheet, failing which it shall be presumed that the Workman has no defense to offer in this matter and further action shall be contemplated. Ex. M/2, is the order of the Chief Manager, acting as Disciplinary Authority passed down July 19<sup>th</sup> 2006, wherein he has mentioned that it was decided to hold a departmental enquiry into the matter and appointed Enquiry Officer and Presenting Officer for the enquiry. The Workman was advised to appear before the Enquiry Officer at the time, date and venue as and when advised by him. The Workman has referred to the staff Circular number 2569 dated January 31<sup>st</sup> 2000, which provides a list of Disciplinary Authority and Appellate Authority. In cases of misconduct of the cross and minor nature, the clause 2(c) of this Circular, provides that in other branches where the Branch is headed by the Chief Manager, the Disciplinary Authority shall be the Chief Manager and the Zonal manager shall be the Appellate Authority. This Circular is not disputed from the side of Management. Workman has referred to a judgment of <b>Bank Of India &amp; others Vs O.P.</b></p>	

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	<p><b>Swarnkar (2003)7 SCC 721</b> which holds that the Bipartite Settlement/ Memorandum of Settlement have binding effect. Since from perusal of charge sheet itself, it comes out that it was issued by the Zonal Manager and when the fact that the Branch in which the Workman was working at the time of the alleged misconduct was headed by the Chief Manager, the Chief Manager shall be the Disciplinary Authority. Even if we assume that the charge sheet was issued by an officer who was above in the rank of the Disciplinary Authority, in absence of specific proof that it resulted into prejudice to the Workman, it becomes an irregularity only and not an illegality vitiating the charge sheet and enquiry. In the case in hand, there is nothing on record or evidence to indicate that how it prejudice the defense of the Workman. It will not be out of its scope to mention here that the Workman had still an opportunity to prefer appeal against the order of the Zonal Manager issuing the charge sheet which would otherwise have been the Appellate Authority. Hence, there appears no illegality in the charge sheet.</p> <p>As regards the contention of the Workman that the Bipartite Settlement/Memorandum of Settlement (MoS) provides that the Workman who is issued a charge sheet shall be given 15 days time for reply, wherein in the case in hand, only seven days time was given. Hence, his defense was prejudiced because the time which he was entitled to be given as per the Settlement was not given to him. It is established that only seven days time was given to the Workman to file reply of the charge sheet, but since the order, holding a regular departmental enquiry against the Workman was passed only on July 19<sup>th</sup> 2006, that is much after 15 days from receipt of the charge sheet by the Workman, it can be safely held that no prejudice was caused to the Workman on this score. Hence this contention, also fails.</p>	

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	<p>As regards the contention of the Workman that the charge sheet is vague, it is not found correct from the reading of the charge sheet itself. Since the charge sheet has been issued by a Competent Authority as is the case in hand, it does not matter as to some other officer also put his initials on the charge sheet. These facts cannot be held to have prejudiced the defense of the Workman, as it is apparent from record.</p> <p><b>As regards the 3<sup>rd</sup> point taken by the Workman,</b> while attacking the departmental enquiry, it is true that the Presenting Officer was member of our fact-finding team conducting preliminary enquiry in the matter before the charge sheet was issued. According to the Workman, this Officer was naturally interested in the outcome of the enquiry against the Workman. It would have been fair on the part of the Management to appoint some other Officer as Presenting Officer because presence of bias in this Presenting Officer could not be ruled out, but it has to be seen that the Presenting Officer need not be as impartial as the Enquiry Officer. He is the representative the Department. Hence he is naturally inclined towards the Department. In absence of evidence that any action of the Presenting Officer had resulted into prejudice to the Workman, this fact also cannot be held sufficient to vitiating the inquiry. The enquiry proceedings and enquiry papers show that the Workman participated in the enquiry. He was given opportunity to cross-examine the witnesses of Management. He was supplied the documents and was also given opportunity to inspect the documents with respect to his prayer in this respect. Hence, in the light of these facts, the departmental enquiry cannot be held vitiated on this ground.</p> <p><b>As regards the 4<sup>th</sup> point taken by the Workman,</b> challenging the legality of the enquiry that the enquiry should have been stayed till outcome of the case filed by the police after investigation of the First</p>	

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	<p>Information Reports registered by the Management against the Workman. When the trial was going on against the Workman, as it has prejudice his defense, because the nature and substance of allegations as well the evidence in support was one and the same in both the proceedings. The settled proposition of law is that criminal trial and departmental proceedings are two different matters, independent of each other. The standard of proof required for the charge in both the proceedings are different. Workman has referred to in Clause 4 of the Memorandum of Settlement dated April 10<sup>th</sup> 2002 in this respect. It is to be noticed here that the Workman has nowhere pleaded this fact in his statement of claim. He has never raised this point and prayed that a departmental proceeding be stayed because of pendency of criminal trial against him with respect to the same charge based on same evidence, and also the fact that the criminal trial has not concluded yet, this ground is also not available to the Workman. I am supported in holding this view by a judgment of <b>Supreme Court in CA No 2518 /2012, State Bank of India and others Vs P. Zadenga decided by Supreme Court division bench on October 3, 2023.</b> In the case referred, the Supreme Court framed, following issues for determination –</p> <p><b>a- Does clause 4 of memorandum of settlement dated April 10<sup>th</sup> 2002. Create a bar on departmental proceedings continuing. When the person subjected there to is being tried before a criminal court for offences of same origin ?</b></p> <p>b- Does Acquittal in some of the connected proceedings entail benefit in the surviving proceedings ? Further, inuring a right upon the delinquent employee of automatic discharge in the disciplinary proceedings ?</p> <p>The issue number (a) is relevant to the case in hand, which has been answered as follows-</p>	

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	<p><b>Clause IV of memorandum of standing dated 10<sup>th</sup> April 2002 does not envisage a complete standstill of departmental proceedings as a result of pendency of criminal proceedings. The position of law is that the state of latter is desirable but the same is to be affected only for a reasonable period of time.</b></p> <p><b>The paragraph 22 of this judgment requires to be referred as follows-</b></p> <p><b>“Having perused the delinquent employee’s response to the initiation of proceedings, most significantly, we noticed that no plea of MoS was ever taken. No is specifically of post appointment of disciplinary proceedings are waiting conclusion of a criminal trial was made.”</b></p> <p><b>The paragraph 26 of this judgment is also being reproduced as follows-</b></p> <p><b>“Both these aspects, taken along with the fact that it is not mandatory to stay the disciplinary proceedings, particularly when they have been initiated after the prescribed period of one year, we cannot bring ourselves to agree with the courts below. The restriction within clause 4 is not complete and is to be applied on facts.....”.</b></p> <p><b>Hence, this point also is not sufficient to hold the departmental enquiry vitiated in law.</b></p> <p><b>As regards point number 5<sup>th</sup> taken from the side of the Workman, the perusal of the enquiry record shows that the Workman examined one witness in his defense, who was cross-examined by Management Representative that is the Presenting Officer. The enquiry concluded on 13<sup>th</sup> of December 2006. All concerned, including the workman signed the proceedings and as it comes out from the proceedings, the Enquiry Officer directed to the parties to file their</b></p>	

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	<p>briefs. There is nothing on record to show that the workman proposed some other witness to be examined from a side or to file some other documents from the side which was refused by the enquiry officer. Hence this point also cannot be held to vitiate the enquiry.</p> <p>The workman has further submitted that on the direction of the Vigilance Department of the Management Bank, which directed that the enquiry proceeding against the Senior Manager of the Branch with respect to the same charges on the basis of same evidence was considered as composite enquiry and in the light of departmental circulars in this respect, the Disciplinary Authority and the Appellate Authority were changed which is against law. The learned Counsel for Management has referred to the directions issued with respect to the Vigilance Management in Public Sector Banks vis a vis the role and function of the CVC. In these directions, it is mentioned in clause 10.2. That <b>"when a group of officers or involved in the same set of lapses in a branch/zonal office, having different Disciplinary Authorities, there could be delay in processing of cases and also differences in perception of the lapses. Therefore, Disciplinary Authority of the senior most Officer in that group may institute and complete the Disciplinary proceedings in respect of different Officers involved in the same case."</b></p> <p>From the record, it is established that the enquiry against the present Workman and the Senior Manager was conducted separately, charges against both were framed separately and the enquiry reports also were submitted separately. Even if the Disciplinary Authority and Appellate Authority of the senior most Officer, that is the Senior Manager in the case in hand, was made the Disciplinary Authority and Appellate Authority of the Workman, I fail to understand how it is caused prejudice to the workman.</p>	

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	<p>Another point raised by the Workman is that he was served his dismissal order which was not signed by the Disciplinary Authority. Even if he was served unsigned dismissal order, it caused no prejudice to him because he filed appeal and review petition against his dismissal.</p> <p><b>On the basis of above discussion, the departmental enquiry is held just and legal and the preliminary issue is answered accordingly</b></p> <p>List on <b>29/05/2024</b> for hearing on other issues.</p> <p>Parties are directed to file their evidence with respect to other issues till or before date fixed.</p> <p style="text-align: right;"><b>Presiding Officer</b></p>	