

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/03/2017

Anil B. Nagrale(Deceased, represented through LR's) V/S H.P.C.L

14.03.2024	<p><u>Order on Preliminary Issue</u></p> <p>The preliminary issue, is as follows:-</p> <p>Whether the departmental enquiry conducted is legal and proper.</p> <p>Facts connected, in brief, are mainly that the workman was served a charge-sheet dated 11.05.2009 on 15.05.2009, wherein following charges were levelled against him –</p> <ol style="list-style-type: none">1. Circumventing the procedure by preparing cash receipts and manually feeding the Bank Deposit Slips by using “Bank Deposit Slip Update Option” resulting into non appearance of applicant of such instruments in any of the Bank Deposit Slips and also not depositing with Bank, as result whereof the respective dealers/ customers got credit and lifted the product on the basis of the same, though not credit facility was being actually received by the corporation.2. Fraudulently preparing cash receipts in the JDE system from the workman own transaction ID in the name of M/S. Prayagraj Gas & Domestic Appliances with fictitious cheque numbers, though no such cheque was issued by the dealer in favour of the management, thus enabling the dealer to unlawfully gain and causing loss to the corporation, which is misconduct under Rule 31(4), 31(5), 31(9), 31(20) and 31(38) of the standing orders. <p>A departmental enquiry was conducted by the management with respect to the charges which was against the Rules and Principles of Natural Justice. It was conducted in an arbitrary manner no proper opportunity of hearing was granted to the workman. The documents necessary to prove the charge were not supplied to him resulting into prejudice to him and deprived him to properly defend his case. The material</p>	
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	<p>witnesses were not examined during the enquiry. The conduct of the enquiry officer was not fair. The enquiry officer submitted his enquiry report on 17.12.2010, wrongly holding the charges against the workman proved. The Disciplinary authority passed the punishment order ignoring representation of the workman on the enquiry report. The Appellate authority dismissed appeal without giving the workman an opportunity of hearing.</p> <p>Rebutting the allegations, management has taken a case that before enquiry was ordered, the workman was given opportunity to have his side on the charge-sheet, after serving on him, a copy of the charge-sheet. He did file his reply dated 11.05.2009 on the charge-sheet which was found not satisfactory and it was decided to conduct a departmental enquiry into the charges, accordingly Enquiry officer and Presenting officer were appointed by the Disciplinary authority. The enquiry started from 15.09.2009 to 16.06.2010 in 4 dates. The workman was supplied the documents which he had asked and which the enquiry officer had ordered the management to produce. The enquiry officer submitted his enquiry report. The Disciplinary authority, after getting representation of the workman, imposed the punishment order and the Appellate authority dismissed the appeal as per law.</p> <p>In evidence on this preliminary issue, the workman filed his affidavit as his examination-in-chief, he was crossed examined by management. Management filed affidavit of its witness as his examination-in-chief. He was also cross examined by workman side.</p> <p>The management filed original enquiry papers and proved.</p> <p>I have heard argument of learned Counsel Shri Anil P. Gajbhiye and for workman and learned Senior Counsel Shri Anoop Nayar. Workman side has filed written argument also. I have gone through the written argument as well the record in the light of rival arguments.</p> <p>Workman side has attacked on the legality of the</p>	

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	<p>enquiry on following points:-</p> <ol style="list-style-type: none">1. In document M-1, Shri Mahendra Gawai stated that he had not issued the Cheques, thus, when the case of the workman was that he did not make any payment without receiving cheques and no cash receipt was prepared by him, this witness was necessary to be examined. Non-examination of this witness has prejudiced the defense of the workman.2. The screenshots of the BDS (Bank Deposit Slips) were not supplied to the workman.3. There were other employees also facing the identical charges but separate enquiry was conducted with regard to each of the charged employees.4. In this matter, technical point in connection of the tampering of JDE system was vital no technical expert was examined.5. The job of the workman was to collect the cheques from the dealers and not to deposit the cheques with the bank. The documents M-3 & M-4 were drawn from the system in absence of the workman.6. Opportunity of personal hearing of was not granted to the workman by appellate authority. <p>From perusal of the enquiry report as well the statement of the workman and management witness it comes out that the workman did not make any prayer to examine any witness nor did he make any prayer for providing any document. It also come out that evidence which was proposed by the management in support of the charge, to prove the charges, was produced by the management. If the workman thought evidence of any of other witnesses as mentioned by him was necessary for his defense or to discredit the evidence in support of charge, he could have prayed for such witnesses and documents. He did not do so hence his argument on this point will not help him at this stage.</p>	

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	<p>As regards the argument that the workman was not given opportunity of personal hearing by the appellate authority, the enquiry cannot be held vitiated in law as it has been held by Hon'ble Bombay High Court Nagpur Bench in W.P. No.-2179 of 2014 filed by the workman raising this point.</p> <p>It comes out from perusal of enquiry papers and proceedings that the workman participated in the enquiry. He was given opportunity to cross examine the witnesses and availed it. He was also given opportunity to lead any evidence in his defense. He was served copy of enquiry report and punishment order was passed after taking his representation on the enquiry report. Before instituting the enquiry, he was given opportunity to have his side on the charge-sheet. The disciplinary authority passed order of enquiry taking into consideration the reply of the workman on the charge-sheet.</p> <p>Accordingly, holding the departmental enquiry just and legal, preliminary issue is answered against the workman.</p> <p>Following other additional issues are framed:-</p> <ol style="list-style-type: none">1. Whether the charges are proved from the evidence in enquiry.2. Whether the punishment is proportionate to the charges.3. Whether the workman is entitled to any relief. <p>Parties are directed to filed their evidence on these additional issues only.</p> <p>List on _____ for hearing on additional issues.</p> <p style="text-align: right;">Presiding Officer</p>	