

# 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/04/2017

Arun Yadaorao Nandanwar V/S H.P.C.L.

13.03.2024	<p><b><u>Order on preliminary issue</u></b></p> <p>The preliminary issue, is as follows:-</p> <p><b>Whether the departmental enquiry conducted is legal and proper ?</b></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 leveled against him –</p> <ol style="list-style-type: none"><li>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.</li><li>2. Fraudulently preparing cash receipts in the JDE system from the workman own transaction ID in the name of M/S. Prayagraj Gas &amp; 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.</li></ol> <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 demanded by the workman vide his letter dated 15.10.2010, were not supplied to him resulting into prejudice to him and deprived him to properly</p>	
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	<p>defend his case. The prayer of the workman to examined witness on his behalf was not granted, the conduct of the enquiry officer was not fair. The enquiry officer submitted his enquiry report on 31.03.2011 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 15.03.2011 in 9 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 R.N. Sen 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"><li>1. Management did not Annex. the Annexure 1 to 5 with the charge-sheet hence the workman could not effectively reply to the charge-sheet. Hence the charge-sheet was defective.</li><li>2. No sufficient opportunity was given to the workman to defend him because the documents demanded by him were not supplied during the enquiry.</li><li>3. The workman was denied to engage a defense lawyer in the enquiry and was asked to appoint his defense assistant only from the employees of management.</li><li>4. The workman was not allowed to examine his witness in his defense during the enquiry.</li><li>5. The enquiry officer acted as prosecutor.</li></ol> <p>The 1<sup>st</sup> argument against the departmental enquiry is that the Annexures to the charge-sheet were not served on the workman at the time he was asked to show cause against the charge-sheet. It is admitted by the workman that these Annexures were served on him during the course of enquiry. Hence, no prejudice could be assumed to have been caused to the defense of the workman because the documents were provided to him during the enquiry.</p> <p>As regards the 2<sup>nd</sup> argument, perusal of enquiry records shows that during the course of enquiry, the workman filed an application before enquiry officer on 15.02.2010 seeking copies of 8 documents mentioned in the application. Is this application has been dealt with in the 5<sup>th</sup> sitting of the enquiry and the Presenting officer was directed to provide document no.-1 to 4 and with regards to document no.-5 to 8, they were found not relevant for the enquiry by the Enquiry officer. In the 6<sup>th</sup> sitting, as it is apparent from record, the workman admitted having receipts these documents and also confirmed to have inspected the copies of all BDS for the period December 2004 to March 2006. This also mentioned in the</p>	

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	<p>proceeding of this sitting that the workman submitted that he did not wish to produce any oral/documentary evidence. Hence, this argument is also held untenable.</p> <p>As regard the 3<sup>rd</sup> argument regarding refusal to get assisted by an Advocate during the enquiry, the settled law on this point that are delinquent employee does not have a right to engage an Advocate during the enquiry for conducting his defense. He was permitted to engage any employee as his defense assistant. He did engage one Shri More as his defense assistant, who was transferred to another place according to the workman. He was at liberty to engage another defense assistant from among the employees. Hence, argument from the side of workman on this point also fails.</p> <p><b>In Dinesh Chandra Pandey Vs. High Court of M.P, AIR 2010 SC 3055.</b> Held- The normal rule is that the delinquent would be entitled to engage another officer/official to present his case. But if the presenting officer is a legal practitioner, he may normally be permitted to engage a legal practitioner. A judge may be law graduate holding a bachelor degree in law from any University established by law in India but this by itself would not render him as a legal practitioner. Where in departmental proceedings against a judicial officer of subordinate judiciary an ADJ was appointed as presenting officer, the delinquent cannot claim to be represented through lawyer.</p> <p>As regards the 5<sup>th</sup> argument, it is not substantiated from record.</p> <p>In the light of above discussion, there is nothing on record to show that there has been any illegality conducted during the enquiry. The Disciplinary authority served a copy of the enquiry report and after considering the representation of the workman on enquiry report, imposed the punishment.</p> <p>The workman was not given opportunity of personal hearing by the Appellate authority but this is the discretion of the Appellate authority to grant or refuse personal hearing in absence of any prejudice.</p>	

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	<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"><li>1. Whether the charges are proved from the evidence in enquiry.</li><li>2. Whether the punishment is proportionate to the charges.</li><li>3. Whether the workman is entitled to any relief.</li></ol> <p>Parties are directed to filed their evidence on these additional issues only.</p> <p>List on 21.05.2024 for hearing on additional issues.</p> <p style="text-align: right;"><b>Presiding Officer</b></p>	