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

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	Case No. CGIT/LC/R/13/2014 **Ashutosh Awasthi V/S Bank of Maharashtra**	
29.04.2024	**Order on preliminary issue**. The preliminary issue, framed vide is as follows :- **Whether the enquiry conducted against the workman is just proper and legal ?** I have heard argument of Mr. Pranay Choubey learned Counsel for workman and Mr. Ashish Shroti learned Counsel for management on issue no.-1 as preliminary issue. Parties have filed written arguments also which are part of record. I have perused record and the written arguments. The charges against the workman are mainly that he made unauthorized and fraudulent deposits by way of various instruments, in his Saving Bank account and thereafter, withdrew these amounts fraudulently by way of various withdrawal slips/instruments details mentioned in the charge sheet, thus committed misconduct under Clause-19.5 (j) of The Bipartite Settlement. The workman side has challenged the departmental enquiry on various grounds which are namely that defense was denied proper opportunity to defend itself, principles of natural justice were not followed, the Enquiry Officer was acting under the direction of the Disciplinary Authority and taking decisions under the directions of the Disciplinary Authority, thus not acting independently and impartially, the prayer of the workman with regard to change of the Enquiry Officer was not decided, the crucial documents were not provided by the presenting Officer inspite of direction of the Enquiry Officer to supply them to the workman, a Police case on the basis of a First Information Report filed by the Bank with respect to the same incident was pending before Court and the Enquiry Officer did not wait the decision of the Court inspite of the fact that the charges and the evidence were the same in the criminal proceedings and the departmental enquiry. Management has rebutted the allegations with case that the enquiry was conducted as per Rules and Bipartite Settlement. Principles of natural justice were followed,	

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	workman was given full opportunity to defend itself. Hence, there is not illegality regarding substance or procedure in conducting the enquiry. The workman has filed his affidavit as his examination in chief. He has been cross examined by management. He has proved documents Ex. W/1 to Ex. W/9 which are mainly documents relating the enquiry and certified copy of statement of witnesses before Criminal Court during trial. Management has not filed any evidence inspite of much opportunity given. Learned Counsel for workman has attacked the legality of the departmental enquiry mainly on following grounds:- 1) No time was given to the workman to file reply of the charge sheet which is in violation of Regulation 6 of Bank of Maharashtra Officers Employees (Disciplinary & Appeal) Regulations 1976 (in short 'TheRegulations'). 2) Inspite of direction of the Enquiry Officer to supply documents to the workman, the Presenting Officer refused to supply which is in violation of Regulation 6 of The Regulations. 3) The Enquiry Officer was not acting independently rather was working as directed by the Disciplinary Authority. 4) Aggrieved by the conduct of the Enquiry Officer, the workman filed an application before the management to change the Enquiry Officer. This application was never decided. 5) The Enquiry Officer acted as a Prosecutor. He examined MW/4 on 07.01.2012 in absence of the workman. Learned Counsel has relied on following Judgments :- ***1. Union of India vs. Mohd. Naseem Siddiqui (2005) 1 LLJ 931 M.P.*** ***2. P.V. Rudrappa vs. State of Karnataka W.P. No.- 9642/2020 D.B. Karnataka.*** ***3. State of Maharashtra vs. Smt. Prabha Krishna Ji Kamble, W.P. No.- 10573/2015, D.B. Bom.***	

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	Learned Counsel for management has mainly submitted arguments as follows :- 1) Copies of documents were provided. The Enquiry will not vitiate only on the allegation of non supply of documents and the workman is require to plead and prove that prejudice caused to him on account of such non supply of documents. 2) Regarding non grant of time to the workman to file reply to the charge sheet, it was served to him on 21.01.2011 and enquiry commenced on 04.07.2011, hence the workman had sufficient time to reply. 3) Allegation regarding examination of MW/4 in absence of the workman is not supported from record. 4) Criminal Trial and Departmental Enquiry are two parallel proceedings independent of each other. As regard the **first argument from the side of workman regarding violation of Rule 6 of Regulations,** perusal of this Rule makes it clear that non observance will not always result into prejudice to the workman. At the best, this Rule is directory and not mandatory. Settled law on this point is that in suitable cases, the Disciplinary Authority may issue order for departmental enquiry without obtaining reply of the delinquent employee on the proposed charge sheet. From record also there appears no prejudice caused to the workman due to non observance of Rule 6. Hence, this argument from the side of the workman fails. As regards the **second argument from the side of workman that the documents sought by the workman were refused by the Presenting Officer to be supplied to the workman inspite of clear direction of the Enquiry Officer** resulting into prejudice, perusal of record reveals that the workman had requested supply of original documents for their inspection by way of an application dated 20.10.2011 wherein he demanded 13 documents out of which, only 2 were provided. These documents were vital to rebut the allegations as it is case of the workman. It also comes out that the Enquiry Officer directed the Presenting Officer to provide the documents sought by the workman on 20.01.2012,	

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	04.02.2012 and 13.02.2012, which were not supplied to the workman. Further, the Presenting Officer consented these documents supplied but refuse to supply. It further comes out from perusal of enquiry papers that on 20.10.2011 the workman sought photocopy of the documents by filing an application which were total 15 in number, details mentioned in the application itself. It further comes out that the Enquiry Officer directed the Presenting Officer to supply details of documents mentioned in point no.-3 of the application which are the names and designation of user IDs mentioned in it. He further directed to supply certified photocopy of pre processed daily clearing checked and authenticated by authorized official for the dates mentioned at point no.-6 of the application. It also comes out that the Presenting Officer first agreed to provide these documents particularly the clearing statement at point no.-6 of the application but during the course of enquiry the Presenting Officer refused to supply in the proceeding dated 13.02.2012 stating that these documents were not relevant to the enquiry. The question arises here is twofold, **firstly,** was the Presenting Officer right in refusing to provide documents which he has been directed to provide to the workman by the Enquiry Officer. The answer to this question is 'NO'. The **second point** arises as to whether non supply of these documents resulted in prejudice to the workman. **To appreciate the second point nature of charge has to be seen.** The charges were of fraudulent credit in accounts and withdrawals through computers. There is an Information Systems Security Policy prevalent in Banks in this respect. It is provided in these Rules that a unique user ID will be assigned to all the systems and services to a new user so that user can be linked with it and made responsible for his/her actions. All the deposits and the withdrawals were done through user IDs of employees and systems. The defense of the workman was that it was not he who had done these transactions nor was his User ID/ User ID of the System allotted to him were used for these transactions. To show that these transactions were done by user IDs of other employees, the documents as mentioned above, sought by the workman were necessary to rebut the charge. Keeping this point in view, the Enquiry Officer had directed the Presenting Officer to supply this document.	

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Hence, it is established that non supply/refusal to supply the documents mentioned above as ordered by the Enquiry Officer resulted in prejudice to the defense of the workman.

Learned Counsel for management has referred to following case laws –

1) ***State Bank of India vs. Tarun Kumar Chatterjee, (2000) 8 SCC 12, Para 5, 7 & 8***

Reproduced as follows-

This extract is taken from *State Bank of India v. Tarun Kumar Banerjee*, (2000) 8 SCC 12 : 2000 SCC (L&S) 1049 : 2000 SCC OnLine SC 1328 at page 17

"5. If we look at the evidence adduced in the present case, it is given by three witnesses who are the officers of the appellant Bank (*i*) Shri A.R. Dutt, the Branch Manager, (*ii*) Shri S.K. Mitra, Head Clerk, and (*iii*) the present Bank Manager. The evidence of Shri A.R. Dutt is that on the date of occurrence a lady depositor produced two pay-in-slips consisting of draft application forms and a saving bank deposit form, each for Rs 1000 only plus Bank's commission for draft application form which were passed by the Accounts Clerk for deposit in cash department. The amount was received by the first respondent who was acting as Head Cashier. The lady customer did not produce the savings bank pay-in-slip at the cash counter but delivered Rs 3000 as told by her to him with two draft application forms. At about 1 p.m. the lady with her husband came to him and complained that she had deposited Rs 3000 and odd with the cashier but did not receive the savings Bank pay-in-slip nor the excess amount refunded to her by the Cashier. On the receipt of the information he personally went to the cash department and checked the cash but did not find any excess amount therein. On asking the first respondent about the amount received by him he completely denied the same. He asked the Accountant to check the cash in the strong room and searched the Cashier concerned whether he has any cash of Rs 1000 with him. There was no excess cash found in the strong room. When at about 4.30 p.m. he asked the Accountant to search the Cashier, Respondent 1, the Accountant then started checking him, he personally went out of room and saw the first respondent throwing the bundles of notes by the side of the wall in the accounts department, the possession of which was taken by him and he questioned Respondent 1 about the same. Respondent 1 told him that he had put the money in his socks. On next Monday he took a statement in writing duly signed by the first respondent and reported the matter to the head office and thereafter Respondent 1 was put under suspension under instructions from head office. In the cross-examination nothing worthwhile was elicited to tilt the evidence tendered in the

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examination-in-chief. This statement of Shri A.R. Dutt is corroborated by Shri S.K. Mitra who was Head Clerk at the relevant time. Again nothing worthwhile is elicited in his cross-examination except to state that he belonged to SBSSA. The Tribunal, however, went on to say that even though the first respondent had not examined himself nor was any cross-examination directed at the witnesses to the question of his being a victim of conspiracy by the employees of the appellant Bank who are members of another rival union to which he belonged and placed heavy reliance on non-examination of the complainant, non-production of money, non-production of the so-called confessional statements and non-production of any evidence which may have been available. But as far as the evidence tendered by the two witnesses is concerned who actually saw the incident having taken place in the manner referred to earlier, the charge of misconduct against the first respondent stood proved to the hilt and we fail to appreciate as to how the Tribunal could have taken any other view.

7. At this stage, it is necessary to notice one argument that was urged on behalf of the first respondent, namely, that in the course of the order dismissing the first respondent from service it is noticed as follows:

"In summing up after going through the issue raised by Shri Banerjee in detail, I am of the opinion that a domestic enquiry like ours does not give any scope for producing all evidences whether having direct bearing in the case or not as is being done in a court."

8. It is submitted that even if evidence is withheld, the conclusion of the enquiry officer would be correct is a perverse approach. We do not think so. What is stated therein is that when sufficient evidence was produced to conclude one way or the other, the evidence not produced will not be of any significance unless there was such evidence which was withheld would have tilted the evidence adduced in the course of domestic enquiry. No such evidence is forthcoming in this case. Therefore, this argument deserves to be rejected."

2) State Bank of Bikaner vs. Nemichandra Nalwaya, (2011) 4 SCC 584, Para 10

The referred para is being reproduced as follows-

This extract is taken from *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya,* (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 588

"10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal

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proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

3) ***Union of India vs. Alok Kumar, (2010) 5 SCC 349, Para 83, 84, 85, 92***

The referred para are being reproduced as follows-

This extract is taken from *Union of India v. Alok Kumar*, (2010) 5 SCC 349 : (2010) 2 SCC (L&S) 22 : 2010 SCC OnLine SC 474 at page 378

"83. Earlier, in some of the cases, this Court had taken the view that breach of principles of natural justice was in itself a prejudice and no other "de facto" prejudice needs to be proved. In regard to statutory rules, the prominent view was that the violation of mandatory statutory rules would tantamount to prejudice but where the rule is merely directory the element of de facto prejudice needs to be pleaded and shown. With the development of law, rigidity in these rules is somewhat relaxed. The instance of de facto prejudice has been accepted as an essential feature where there is violation of the non-mandatory rules or violation of natural justice as it is understood in its common parlance. Taking an instance, in a departmental enquiry where the department relies upon a large number of documents majority of which are furnished and an opportunity is granted to the delinquent officer to defend himself except that some copies of formal documents had not been furnished to the delinquent. In that event the onus is upon the employee to show that non-furnishing of these formal documents have resulted in de facto prejudice and he has been put to a disadvantage as a result thereof.

84. Even in the present cases, Rule 9(2) empowers the disciplinary authority to conduct the inquiry itself or appoint other authority to do so. We have already held that the language of Rule 9(2) does not debar specifically or even by necessary implication appointment of a former employee of the Railways as enquiry officer. Even if, for the sake of argument, it is assumed otherwise, all the respondents have participated in the departmental enquiries without protest and it is only after the orders of the competent authority have been

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passed that they have raised this objection before the courts. In the light of the peculiar facts and circumstances of the present case, it is obligatory upon the respondents to show that they have suffered some serious prejudice because of appointment of retired railway officers as enquiry officers. We have no hesitation in stating that the respondents have in no way satisfied this test of law. Thus, if their argument was to be accepted on the interpretation of Rule 9(2), which we have specifically objected, even then the inquiries conducted and the order passed thereupon would not be vitiated for this reason.

85. The doctrine of de facto prejudice has been applied both in English as well as in Indian law. To frustrate departmental enquiries on a hyper technical approach has not found favour with the courts in the recent times. In *S.L.Kapoor* v. *Jagmohan* [*S. L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379] a three-Judge Bench of this Court while following the principle in *Ridge* v. *Baldwin* [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)] stated that if upon admitted or indisputable facts only one conclusion was possible, then in such a case that principle of natural justice was in itself prejudice would not apply. Thus, every case would have to be examined on its own merits and keeping in view the statutory rules applying to such departmental proceedings. The Court in *S.L. Kapoor* [*S.L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379] held as under: (SCC p. 392, para 18)

"*18*. In *Ridge* v. *Baldwin* [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)] (AC 40 at p. 68 : All ER at p. 73), one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed at (p. 68):

'It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course.'

92. We are not able to accept the contention addressed on behalf of the respondents that it is not necessary at all to show

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	de facto prejudice in the facts of the present cases. We may notice that the respondents relied upon the judgment of this Court in *ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] that imposition of punishment by the disciplinary authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated the sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those cases where prejudice was caused to the delinquent. Otherwise right from *S.L. Kapoor case* [*S.L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379], a three-Judge Bench of this Court and even the most recent judgment as referred to by us in *Kailash Chandra Ahuja case* [(2008) 9 SCC 31 : (2008) 2 SCC (L&S) 789] has taken the view that de facto prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, of course, depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiora*. In the latter judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to persuade the Court to interfere with the departmental enquiry or set aside the orders of punishment." There is no quarrel with the proposition of law laid down by Hon'ble The Apex Court in the referred judgments but since the facts of the case in hand are different to the cases referred, these decisions will not help the management. On the basis of this discussion, the second leg of argument of learned Counsel for workman that the defense of the workman was prejudiced due to non supply of documents by Presenting Officer inspite of order of Enquiry Officer is liable to be accepted. Regarding the third and the fourth argument of learned Counsel for workman, since the Enquiry Officer conducts enquiry on the behalf of the Disciplinary Authority, there appears no illegality in seeking directions from the Disciplinary Authority by the Enquiry Officer. The in action of management with regard to application of the workman to change the Enquiry Officer, cannot be appreciated and the management was require to pass order on this application instead of keeping it pending.	

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	As regards the last argument of workman side that MW/4 was examined in absentia, this is not supported from record, hence this argument cannot be accepted. On the basis of above discussion, holding the departmental enquiry not legal and improper, the preliminary issue is answered accordingly. Management is given opportunity to prove the charges before this Tribunal. List on _____ for evidence of management in proof of charge. Management may file affidavits of its witnesses after giving copy to workman till or before date and produce them for cross examination by workman on date fixed. **Presiding Officer**	