

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR

NO. CGIT/LC/R/71/2024

Present: P.K.Srivastava

H.J.S..(Retd)

**GVN Murthy,
Mig – Amdi Nagar Hudco Bhilai,
Durg (C.G.) - 490006**

Workman

Versues

**The Director In-charge,
Bhilai Steel Plant,
Bhilai, Durg (C.G.) - 490001**

Management

(AWARD)

(Passed on this 05th day of February, 2026)

As per letter dated 15/07/2024 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. **BSP-8(8-11)/2024-ES-III** dt. 15/07/2024. The dispute under reference relates to:

"Whether the demand of the workman for reinquiry in the present case is justified? If yes, whether he should be allowed to serve the organization (BSP) till such re inquiry concludes?"

Notices were issued to the parties. They appeared and filed their respective statement of claim and defense.

Case of the workman is mainly that, while he was working with the Management of Bhilai Steel Plant in their office, he was issued a charge sheet on 23.01.2023 with allegations that he committed misconduct under Clause 29 (II) of the Certified Standing Orders of the company by committing fraud with the company property (Identity Cards). Substance of the allegation was that, on 30.12.2022 Five Fake Gate passes were found from the carrier bag which was attached to his motorcycle when he was checked at the gate by the Plant at the time of his exit from the plant which he was not authorized to

possess. It is further his case that a Departmental Enquiry was held against him without giving him proper opportunity to defend himself; hence it was a violation of principle of natural justice. The Charges were wrongly found proved in the enquiry record and the removal order passed on the basis of charges on 10.10.2023 as well dismissal of his appeal and review against the removal order is also bad in law. Also, the punishment is disproportionate to the charges, hence the whole action with respect to conduct enquiry and punishment is unjust, mala fide and arbitrary. Hence, requested that his removal order be quashed and be held exonerated from charges with all back wages and benefits.

None appeared for Management in spite of service. Management did not file any written statement of defense. The case proceeded ex parte against the Management.

The workman filed his affidavit as his examination in chief. He further proved documents which he obtained through RTI which are copy of standing orders, charge sheet, enquiry proceeding, enquiry report, punishment memo of departmental appeal, order of appellate authority and memo raising grievance against the order, order of the General Manager on Grievances, memo of the review petition and order of Management on review petition marked as Exhibit W-1 to W-11 respectively. No cross examination has been conducted on behalf of Management.

Management has not filed any evidence.

I have heard ex-parte argument of Learned Counsel Mr. Aditya Singh and have gone through the record.

The reference itself is the issue for determination.

As regards the Departmental Enquiry and punishment, the case of the workman is that he was not given full opportunity to defend himself. He has filed documents relating to departmental enquiry and punishment obtained by him under Right to Information Act. It comes out that a Departmental

Enquiry was proposed against him and he was served the charge sheet with memorandum dated 23.01.2023 informing him to file his written statement before the Authority who had signed the memorandum i.e. the General Manager. It was also mentioned in the memorandum if he failed to file his written statement with respect to charges within seven days; the matter may be proceeded ex-parte against him. There is nothing on record to show that the workman filed his written statement against this memorandum.

The statement relating to charge was that on 30.12.2022 his bag was searched and five forged gate passes were in his bag, which is misconduct/fraud under the Certified Standing orders in Clause 29 (II) which is fraud with the company property (Identity Card).

It further comes out on 08.05.2023, the enquiry proceeded, the workman was also present in the enquiry, statement of two witness were recorded who supported the charge and stated that five forged gate passes were found in the cloth bag attached to his motor cycle when it was checked by these witness at the gate on 30.12.2022. The workman asked some questions from the witness who replied, the workman further stated that he never disputed the recovery of these gat passes from his bag, his case is only that he does not known who kept these gate passes in his bag.

Inquiry Officer submitted his report dated 14.07.2023 holding the charge proved against the Workman. The dismissal order has been passed on 10.10.2023 which states that copy of the enquiry report was sent to the Workman for his reply on 18.07.2023 but no reply was received and hence the punishment order was passed, which was removal of workman from service. So as procedure conducting the enquiry is concern, it is established that the workman participated in the enquiry, also it is established before issuing punishment, he was given opportunity of hearing, **so the departmental enquiry cannot be held to be vitiated in law or procedure.**

As regards the finding with respect to prove of charge, the substance of charge is required to be reiterated which is that on search of cloth bag of the workman which was attached to his motorcycle while he was existing from his offices, five forged gate passes were found. Case of the workman is that, the motorcycle was parked at the motorcycle stand and this fact is not disputed. This is also not the case of Department that the bags were cloth bags having locks, there is no evidence in the enquiry indicating it was the workman who put these allegedly forged identity cards in his bag, parking place was accessible to many persons. The workman left the parking place after parking his vehicle and came on that place at the time of his exist. Possibly that when the bags were not locked and the place was accessible to others also, the fake card could have been placed by someone other also cannot be ruled out.

The Enquiry Officer has not considered this aspect in recording his finding. Furthermore, the charge under **Clause 29 (II) constituting misconduct is theft, fraud or dishonesty with the company's business or property.** In this case, according to management it was fraud with respect to company business. When the gate passes are fake they cannot be the company property. When they are not the property of the company, the workman could not held to have committed fraud with property of company. Clause 29 (XXII) of the Certified Standing Orders is being reproduced as follows –

“Transfer of identity card, document, page or permitted to other person or frequent loss thereafter.”

This is also misconduct in the Certified Standing Orders. In this case there is no charge against the Workman that he transfers his or anyone's identity card. Hence, this charge also could not be referred against the workman and it has not been revealed by Management.

Though, the settled preposition of law is that, standard of proof required in Departmental Proceeding is not with charge should be proved beyond reasonable doubt but definitely it should be proved logically, there must be at least some logical evidence from which logical inference may be drawn. Such evidence lacks in the case in hand as it has been disclosed earlier.

Hence, the finding of the enquiry officer with respect to prove of charge under **Clause 29 (II) of Certified Standing Order** is held without evidence. Consequently, the punishment on the basis of such evidence is also held vitiated in law.

In the light of circumstances, no re-enquiry or further enquiry is held justified in the case in hand.

As regards to relief, the reference of the case of *Deepali Guddu Survasee v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184 : 2013 SCC OnLine SC 719 may be taken in this respect.

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was

employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to

pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to

hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

In the light of principles of law laid down in the case in instant case, the workman is held entitled to be reinstated from the date of order of his removal with all back wages and consequential benefits and to be deemed in continuous service of the Management.

Accordingly, the reference is answered as follows.

AWARD

Holding the demand of the workman for re-inquiry in the present case is not required in the case in hand. The Workman is held entitled to be reinstated from the date of order of his removal with all back wages and consequential benefits and to be deemed in continuous service of the Management.

No order as to cost.

DATE:- 05.02.2026



**(P.K.SRIVASTAVA)
PRESIDING OFFICER**