

## 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
<b>Case No. CGIT/LC/R/86/2012 J.P. Singh V/S NCL</b>		
23.02.2024	<p><b><u>Order on preliminary issue</u></b></p> <p>The preliminary issue, framed vide order dated May 15<sup>th</sup>, 2019 is as follows -</p> <p><b>Whether the departmental enquiry conducted is legal and proper or not ?</b></p> <p>I have heard argument of learned counsel for both the sides and have gone through the record.</p> <p>The charges against the applicant Workman, levelled against him vide order dated September 9<sup>th</sup> 2000 under the certified standing orders were as follows -</p> <p><b>26.14-Unauthorised use or occupation of Company Bangalore/quarters/buildings and/or land any such properly in the custody of the company.</b></p> <p>The enquiry officer submitted his enquiry report, holding the charges of breaking open the lock of residential accommodation number M463, proved by the Workman. Consequently, holding the charges of misconduct proved. The disciplinary authority passed the punishment order on August 2<sup>nd</sup>, 2001.</p> <p>The main attack on the enquiry, made by learned counsel for the Workman is that the report of the enquiry was not given to the workman, hence he was deprived of hearing before punishment as he did not have any occasion to show cause against the enquiry or the punishment. Learned counsel further submits that the enquiry report was supplied to the workman on September 4<sup>th</sup> 2001, whereas the punishment was</p>	

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	<p>awarded on August 2<sup>nd</sup> 2001.</p> <p>Learned counsel for management has rebutted this submission with an argument that the Workman was supplied with a show cause notice a representation was received by the Workman and keeping in view the facts and circumstances, the punishment order was passed. Learned counsel for management has referred to Ann-VI,VII &amp; VIII in this respect but these documents relate to another enquiry against the workman held in 1995.</p> <p>I have gone through these documents referred to by the learned counsel for management.</p> <p>ExM10 is the enquiry report submitted by the enquiry officer, holding the charges are proved. ExM11 &amp; ExM12 (corrigendum) the punishment order in form of warning and misconduct entry given to the workman but these documents relate to another enquiry against the workman held in 1995. The management witness himself admits in his cross-examination that there is no document establishing that a copy of the enquiry report, relating to the case in hand was ever supplied to the workman.</p> <p>The punishment order nowhere is states that the show cause notice, if any, filed by the Workman on the enquiry report was considered by the disciplinary authority. Hence, the argument from the side of management that copy of the enquiry report was supplied to the workman and his side was heard at the time of awarding punishment is not substantiated from the record.</p>	

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	<p><b>Rule 28.10. Of the certified standing orders is being reproduced as follows-</b></p> <p><b>28.10-the proceedings of departmental enquiry shall be in writing. Thereafter the enquiry, it is proposed to impose any punishment against the workman, a copy of the enquiry report shall be given to him. The Workman shall also be given an opportunity to inspect the day to day record of the enquiry proceedings.</b></p> <p>Since it is established from record that before awarding the punishment, the Workman was not supplied copy of the enquiry report, hence he was deprived from having his say, before the disciplinary authority against the enquiry report and on the point of proposed sentence/punishment. In other words, established is the fact that principles of natural Justice were not followed by the disciplinary authority while awarding the punishment.</p> <p><b>Observance of principles of natural justice mandatory:</b> When a departmental enquiry is conducted against a government servant, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. <b>See: State of UP &amp; Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131.</b></p>	

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	<p><b>Principles of natural justice must be realistically and pragmatically applied:</b> Principles of natural justice, though universal, must be realistically and pragmatically applied. See: <b>Manohar Lal Sharma Vs. Principal Secretary, (2014) 9 SCC 614 (Three-Judge Bench).</b></p> <p><b>Observance of Principles of Natural Justice must even when Rules are silent:</b> Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See: (i) <b>Maneka Gandhi Vs. Union of India, (1978) SCC 248 (Section 10 passports Act-rule of natural justice may be followed by giving post decisional opportunity) AIR 1978 SC 579(1), (Seven-Judge Bench).</b> (ii) <b>Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552 (Censure-Rule 55B of erstwhile CCA Rules; rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976).</b></p> <p><b>Opportunity to the delinquent to make representation against the enquiry report before awarding penalty is mandatory:</b> Dismissal-- Irregularity--Entrance Examination--After the submission of enquiry report by the Sub-Committee and before the order of dismissal passed by Executive Council petitioner was not given any opportunity of hearing-- Sub-Committee submitted its enquiry report on 27.06.2009 and recommended the dismissal of petitioner on the same day--Obviously, no opportunity was given to petitioner to make any explanation to against-- Thus, the manner in which punishment has been inflicted is totally illegal-- Inquiry Report as submitted by Sub-Committee is also vitiated and liable to be quashed--Impugned order quashed-- Direction issued. See: <b>Vinay Kumar Pandey (Dr.) Vs.</b></p>	

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	<p>Chancellor, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur 2013 (1) ESC 484 (All)(DB)(LB).</p> <p>Hence, in the light of above discussion, the departmental enquiry conducted is held to be vitiated in law and preliminary issue number one is answered accordingly.</p> <p>On the basis of pleadings by management, an opportunity is granted to management to prove the charge before this Tribunal.</p> <p>List on 29/04/24 for evidence of management on charge.</p> <p style="text-align: center;"><b>Presiding Officer</b></p>	