


ORDER SHEET

CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM

LABOUR COURT, JABALPUR (MP)

CASE NO. CGIT/LC/R-93-2013

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
15-6-22	<p style="text-align: center;"><u>ORDER ON PRELIMINARY ISSUE No.1</u> (Passed on 15-6-22)</p> <p>The preliminary Issue No.1 is as follows:-</p> <p>“Whether the departmental inquiry conducted is legal and fair.?”</p> <p>According to the workman a show cause notice dated 18-8-2009 was issued against him by Management alleging certain misconducts regarding embezzlement and defrauding the bank by fraudulent withdrawals in various accounts and also regarding alleged used of I.D. and password of accountant Chetan Singh Thakur for making unauthorized transaction in various accounts. The other charges were indulging in habitual indebtedness and borrowing from private parties and institutions without approval of the Management and also in transactions relating to amount which are disproportionate to his known source of income through his personal account. The workman submitted his reply dated 2-9-2009 denying the allegations and also submitted relevant document along with the reply.</p> <p style="text-align: center;"></p>	

The Management being not satisfied with the reply decided to conduct an inquiry and a charge sheet dated 5-12-2009 was served on the workman alleging five articles of misconduct mentioned in the charge sheet. The workman filed written reply to the charge sheet denying charges vide his representation dated 16-2-2009. Shri K.K.Pillai, Chief Manager was appointed Inquiry Officer and Shri Vijay Kawatkar, Deputy General manager was appointed Presenting Officer. Shri Sharad Kumar Rathore was permitted to be engaged as defence Assistant as requested by the workman. According to the workman the inquiry was conducted between 21-1-2010 to 18-5-2010 but in total violation and disregard of principles of natural justice, fairness and service rules. Further after the inquiry the Inquiry Officer submitted his inquiry report dated 14-7-2010 to the Disciplinary Authority. The Disciplinary Authority agreed with the finding of the Inquiry Officer without giving the workman an opportunity of hearing and issue notice only on the point of punishment which shows the prejudicial mindset of the Disciplinary Authority in acting on such faulty inquiry report.

The case of the Management on this issue is mainly that the inquiry was conducted as per rules and procedure. The workman participated during the inquiry. He was permitted to engage defense assistant of his own choice. Full reasonable, effective and adequate opportunity was provided to the workman during the course of the inquiry.

The workman has examined herself as a witness on this issue and reiterated her case mentioned above on this issue. She has been cross-examined by Management. The workman has further filed show cause notice dated 18-8-2009. The charge sheet dated 30-11-2009 and 5-12-2009 photocopy of brief submitted by the Presenting Officer during the Inquiry, show cause notice by the Disciplinary Authority on 22-9-2010 and covering letter regarding

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service of the show cause, punishment order dated 4-11-2010 and covering letter with it, order of Appellate Authority dismissing the appeal, all these documents were admitted by Management and marked as Exhibits W1 to W7 respectively.

The Management has examined its witness Vikas Kumar Baranwal, Chief Manager who was later discharged uncross-examined. The management thereafter filed affidavit of its other witness Shri Vijay Kawatkar, the Presenting Officer, who has been cross-examined by the workman.

I have heard arguments of learned counsel from both the sides on Preliminary Issue No.1 and have gone through the record.

The main submission from the side of the workman regarding the legality of the inquiry is that during the inquiry on 2-2-2010 the Presenting Officer produced 36 documents and requested the Inquiry Officer to accept them as Exhibits. The Inquiry Officer straight away admitted those documents and marked them as Exhibits without any witness being examined by the Presenting Officer during the Inquiry to state about these documents and prove these documents. Thus according to the learned counsel for the workman, the whole proceedings adopted by the Inquiry Officer in admitting the documents in such a manner was against law and procedure. Another point raised from the side of the workman is that the Disciplinary Authority did not offer opportunity of hearing to the workman before accepting the Inquiry Report and later issued notice to the workman to present his case/submission after accepting the Inquiry Report which shows bias on the part of the Disciplinary Authority.

It has been submitted from the side of the Management by learned counsel for the Management that the workman did not object to the marking exhibits on the documents

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during the inquiry, hence he cannot raise this point at this stage. Also it has been submitted that Rules and procedures and provisions of Indian Evidence Act, do not fully apply on departmental inquiries as a settled preposition of law.

Learned Counsel for workman has referred to judgment of **Hon'ble Allahabad High Court in Satish Kumar Verma Vs. Allahabad Bank**(2018) 3 UPLBEC 1864, wherein it has been observed that when all the documents produced by the Management during the inquiry has been marked as exhibits, they were required to be proved by the Management witness. It was further held that unless the documents were proved, they could not be relied upon during the inquiry to record a finding. Many decisions of Hon'ble the Apex Court has been ~~referred~~ ^{referred} in para 25 to 35 of the referred judgment.

In another judgment in case of **Union of India Vs. Mansingh** of Division Bench decision of Hon'ble High Court of Delhi in W.P.No.(C) 947/2015, the same principle has been reiterated placing reliance on Judgment of Hon'ble the Apex Court in the **Roop Singh Negi Vs. Punjab National Bank & Others** (2009)2 SCC 570 and **State of U.P. & Others Vs. Saroj Kumar Sinha** (2010) 2 SCC 772.

ON the other hand , learned counsel for the Management has referred to a judgment of Hon'ble the Apex Court in the case of **State Bank of India & Others vs. Narendra Kumar Pandey** (2013) 2 SCC 740 to further his arguments that the nature of proof and procedure in departmental inquiry is different because what is to be seen is that whether there is probable evidence to support the charge or not. Learned counsel for the Management has further submitted that provisions of inquiry in evidence Act do not squarely apply in departmental inquiries. Learned counsel has particularly referred to para 22 of this judgement.

In my view, there are two points which support the two issues which have been framed. First is legality of procedure adopted during the inquiry and second the legality of the finding recorded by the Inquiry Officer in his Inquiry Report. The legality of procedure is being considered as preliminary issue by this order. "Whether the Inquiry Officer recorded finding of guilt of the workman on the basis of evidence admissible in law or not" is subject matter of another issue framed by this Tribunal, which shall be taken later on. It is not disputed that the workman was given opportunity to examine witness though no witness was cross-examined by the Presenting Officer. This is also not disputed that he was permitted to be assisted by his defense assistant and he did participate at every stage of the inquiry. Hence the procedure adopted by the Inquiry Officer cannot be held vitiated for non-observance of principles of natural justice and Rules/procedures for conducting inquiry. At the cost of repetition, it is necessary to point out whether the finding of the Inquiry Officer is based on admissible evidence or not, has not been considered, while considering this preliminary issue which is regarding legality of procedure adopted by the Inquiry Officer while conducting the inquiry. Though these two overlap on certain points.

The second leg of argument of learned counsel for the workman is that it was bias on the part of the Disciplinary Authority in accepting the finding of inquiry Officer without giving the workman an opportunity of hearing. The settled law on this point is that it is not always necessary that the Disciplinary Authority may dispense with its hearing before accepting the finding of the Inquiry Officer, submitted in his inquiry report.

On the basis of above discussion, the Issue No.1 is answered against the workman.



List the case on 16-9-22 for hearing on remaining issues. Parties are at liberty to file their respective evidence if any in the form of documents/affidavits, after supplying the copy to each other, within two weeks, from today.


PRESIDING OFFICER