

ORDER SHEET

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

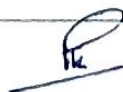
Date of Order of Proceeding	Order Or Proceeding with Signature of Presiding Officer	Remark
Case No. CGIT/LC/RC/03/2012 Gajanand Meratwal V/S SBI		
22.02.2024	<p><u>ORDER ON RECALL APPLICATION</u></p> <p>The applicant Workman has filed an application dated November 16th 2022 for recalling order dated April 5th , 2022, on the grounds mentioned in the application, supported with affidavit. The management has filed its written reply with affidavit, which is on record. I have heard the argument of learned counsel, Mr Santanu Seth for the applicant Workman and Mr Ashish Shrotri for management and have gone through the record.</p> <p>In the case in hand, preliminary issue was framed as follows on the basis of pleadings-</p> <p>Whether the departmental enquiry conducted against the Workman is legal and proper?.</p> <p>The parties were accorded opportunity to lead evidence with respect to this issue. They led documentary and oral evidence.</p> <p>On February 25th 2022, when the case was fixed for argument on preliminary issue, none appeared from the side of parties. Hence, date April 5th 2022 was fixed for order and parties were granted opportunity to file a written arguments on this issue. None of the parties are welded this opportunity of filing written arguments. Hence, on the basis of perusal of record, this issue was decided wide order dated April 5th , 2022, holding the departmental enquiry conducted just, legal and proper.</p> <p>On the third date fixed for hearing after passing of order dated 05/04/2022 on preliminary enquiry , the workmen filed the application to recall this order through his learned counsel. Written reply was filed by management on January 24th 2024</p>	



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	<p>The main grounds taken in the recall application is that ; the said order is an order passed by this Tribunal without hearing the Workman and ;, the Tribunal has ignored this fact that evidence on record established that the enquiry was not conducted following the basic principles of natural Justice. Learned counsel for Workman submits that the Workman was not heard . Hence, the said order is an ex parte order. Perusal of record in the states that this order has been passed, after considering the material on record and after giving the parties opportunity to have their say in this respect, which they did not avail. Except for apologizing the absence of learned counsel from the side of Workman on the date fixed for argument on preliminary issue. The application does not contain any reason whatsoever for his absence on the date fixed and also for not availing the opportunity of filing written arguments by him. Hence, the first ground cannot itself be held sufficient to grant the prayer sought in the recall application.</p> <p>As regards the second leg of argument, learned counsel for the workmen has highlighted following aspects of the departmental enquiry-</p> <ul style="list-style-type: none">a- That the enquiry officer is stepped into the shoes of the presenting officer, which is impermissible in law and that caused severe prejudice and bias to the workman.b- That the as examination in Chief of prosecution witnesses were not done. Therefore, the applicant could not cross-examine them during the enquiry. <p>Learned counsel for management has rebutted this argument on the ground that the enquiry records and enquiry proceedings filed and proved, do not substantiate this argument from the side of Workman.</p>	



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	<p>Learned counsel for the workmen has referred to the dismissal order dated January 24th 2008 para 4(3) to show that even the management accepted that the Workman raised the issue that he was not permitted to cross-examine the witnesses.</p> <p>I have gone through the dismissal order ExW8. The paragraph referred states that the Workman raised, a point before the disciplinary authority that since some witnesses turn hostile during the enquiry, they were not cross-examined because no permission of cross-examination of these witnesses by the Workman was given by the enquiry officer. The enquiry officer seemed to be in a hurry in completing the enquiry. This action of the enquiry officer is against the principle of natural Justice. The disciplinary authority has recorded his finding in paragraph 7 of the order on this objection, wherein he has stated that the defence was granted full opportunity of cross-examination. Since the witnesses stated before the enquiry officer that they paid a bribe to the applicant Workman. Hence, the finding of the enquiry officer with the reference to charge number 1 (XVII) could not be faulted.</p> <p>The learned counsel for the workman further submitted that the enquiry officer himself examined the witnesses and acted as a prosecutor also, which is in violation of principles of natural Justice. According to learned counsel, none of the witnesses was examined by the presenting officer, rather all the witnesses were examined by the enquiry officer himself.</p> <p>I have gone through the record of the enquiry in the light of this argument of learned counsel. It comes out from perusal of enquiry proceedings , that before the prosecution witnesses started their statements, the enquiry officer said to him “KAHIYE KYA KAHNA HAI” or” KAHIYE AAP KO KYA KAHNA HAI” or AAP SAMUH MEIN KYA HAIN”</p>	



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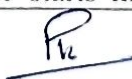
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	<p>or “KYA KAHNA CHAHTI HAIN” only this type of questions which are introductory in nature. From this, it cannot be concluded that in fact the witnesses were examined by the enquiry officer himself. Hence, this argument of learned counsel for Workman also cannot be accepted that the enquiry officer acted as a prosecutor in the enquiry.</p> <p>Learned counsel for the workmen has referred to following case laws-</p> <p>1-Raghunath Bareja Vs Punjab National Bank and others (2007)3 SCC 230.</p> <p>Following paragraph referred-</p> <p>“37. In the present case, while equity is in favour of the respondent Bank, the law is in favour of the appellant, since we are of the opinion that the impugned order of the High Court is clearly in violation of Section 31 of the RDB Act, and moreover the claim is time-barred in view of Article 136 of the Limitation Act read with Section 24 of the RDB Act. We cannot but comment that it is the Bank itself which is to blame because after its first execution petition was dismissed on 23-8-1990 it should have immediately thereafter filed a second execution petition, but instead it filed the second execution petition only in 1994 which was dismissed on 18-8-1994. Thereafter, again the Bank waited for 5 years and it was only on 1-4-1999 (<i>sic</i> 11-1-1999) that it filed its third execution petition. We fail to understand why the Bank waited from 1990 to 1994 and again from 1994 to 1999 in filing its execution petitions. Hence, it is the Bank which is responsible for not getting the decree executed well in time.”</p> <p>2-Union of India and others Vs Ram Lakhon Sharma (2018)7 SCC .670.</p> <p>Following paragraphs referred-</p>	



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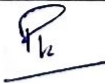
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	<p>“27. In <i>State of U.P. v. Saroj Kumar Sinha</i> [<i>State of U.P. v. Saroj Kumar Sinha</i>, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675] , this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held: (SCC p. 782)</p> <p>“28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.</p> <p>***</p> <p>30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a 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 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.</p> <p>31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor</p>	



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	<p>in <i>Union of India v. Mohd. Naseem Siddiqui</i> [<i>Union of India v. Mohd. Naseem Siddiqui</i>, ILR 2004 MP 821] . In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effect:</p> <p>7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well-recognised facets:</p> <ul style="list-style-type: none">(i) The adjudicator shall be impartial and free from bias,(ii) The adjudicator shall not be the prosecutor,(iii) The complainant shall not be an adjudicator,(iv) A witness cannot be the adjudicator,(v) The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,(vi) The adjudicator shall not decide on the dictates of his superiors or others,(vii) The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. <p>If any one of these fundamental rules is breached, the inquiry will be vitiated.</p> <p>32. The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:</p> <p>“9. A domestic inquiry must be held by an unbiased</p>	



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	<p>person who is unconnected with the incident so that he can be impartial and objective in deciding the subject-matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind.”</p> <p>33. The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:</p> <p>“16. We may summarise the principles thus:</p> <p>(i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.</p> <p>(ii) It is not necessary for the disciplinary authority to</p>	




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	<p>appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.</p> <p>(iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.</p> <p>(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.</p> <p>(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.</p> <p>Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as</p>	




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	<p>illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”</p> <p>34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in <i>Punjab National Bank v. Kunj Behari Misra</i> [<i>Punjab National Bank v. Kunj Behari Misra</i>, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783] . In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees' (Discipline and Appeal)”</p> <p>3-Union of India and others Vs Naseem Siddiqui 2004 SCC on line MP678.</p> <p>There is no quqrell with the proposition of law laid down in these decisions, but since the allegation of bias and violation of principles of natural Justice are not established from record, these decisions do not help the side of the workman.</p> <p style="text-align: center;"></p>	

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	<p>In the light of above discussion, I find no ground to recall the order dated April 5th , 2022. The recall application lacks merit and is dismissed accordingly.</p> <p>List on 15/04/2024 for hearing on other issues.</p> <p>The parties are at liberty to file affidavits/documentary evidence is strictly relating to the other issues after giving copy to the opposite side till or before date fixed.</p> <p style="text-align: center;"> Presiding Officer</p>	