

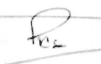
ORDER SHEET

CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT,

JABALPUR(MP)

CASE NO. CGIT/LC/R-15-2009

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
13-9-2022	<p style="text-align: center;"><u>ORDER ON ISSUE No.1</u> (Passed on this 13th day of September-2022)</p> <p>The Issue No.1 is as framed by my learned Predecessor vide his order dated 6-1-2015, has been taken as preliminary issue. It is as follows:-</p> <p style="text-align: center;">“Whether the departmental inquiry conducted against the workman is legal and proper ?”</p> <p>According to the workman the charge sheet was vague and ambiguous. The charges were not specified and the documents in support of the charges were not proved inspite of request by the workman. The workman was suspended during the inquiry. Before issuing charge sheet and suspension, she was under treatment and for that she had been granted leave on her request by the management. There was some complication developed after she had gone for operation for her abortion prior to her suspension . She also developed hypertension, thyroid and other elements for which she was under continuous treatment and she produced medical certificates of Doctors of Government Hospital and Doctors in the panel of the management Bank before the Inquiry Officer explaining her absence and inability to take part in the departmental inquiry on the date fixed but ignoring her prayer the statement of witnesses were recorded in her</p>	



absence. She could not arrange a defense assistant to defend her during the inquiry. The Union also did not come forward to provide her defense assistant, hence she requested permission to engage one retired Bank Officer of State Bank of India for her defence or to permit her to engage an Advocate for it which was refused by the management Bank. The inquiry Officer refused adjournment filed by her with certificate of Government Doctor and the inquiry proceeded against him which was against the Rules and Principles of natural justice.

The Case of the Management Bank on this issue is mainly that the inquiry proceeded for as many as fifteen dates. The workman regularly sought adjournment on medical ground. The Rules did not provide engagement of any employee serving or retired from other Bank nor did it provide for engagement of an Advocate by delinquent employee to defend her in the inquiry proceedings, hence such a request was rightly refused. Since as pleaded by Management, the sole purpose of the adjournments on medical grounds was to delay the inquiry which was rightly refused by the Inquiry Officer and the inquiry proceeded. Hence according to the Management, there is no illegality of any kind in the inquiry.

Both the sides were given opportunity to lead evidence on Issue No.1. The Workman filed and provided documents Exhibit W1 to W5 to be referred to as and when required. She also examined herself on oath and was cross-examined by the management. The management examined its witness on oath who was cross-examined from the workman side. The Management filed and proved the Management papers to be referred to as and required.


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I have heard arguments of Mr. Arun Patel, learned counsel for the workman and Shri P.Shankaran Nair for Management and have gone through the record.

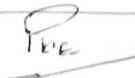
Learned Counsel for workman has mainly submitted that the workman had under gone a surgical operation before the inquiry proceeded against her. She was granted medical leave for that. She developed complications after the surgical operation. She was under treatment from different Doctors in Government Hospital and sometimes under the Doctors in the panel of the Bank. She was not in a position to take part in the inquiry, therefore, she had to seek adjournments during the inquiry on this ground. The learned counsel has referred to the proceedings of 27-2-2006 wherein it has been mentioned that the workman was not present during the inquiry on that date. She had submitted a letter enclosing medical certificate from Doctor A.K.Gidwani of J.P.Hospital, Bhopal and submitted in her letter that :-

No.1:- She had made a representation to the Disciplinary Authority.

No.2:- She has spoken to the Office Bearer of the Union who had assured to assist her in the case. Bank has not given permission to engage strangers/Advocates.

No.3:- Doctor has advised her rest and thus she sought adjournments on these grounds.

According to the proceedings sheet of this date, this prayer was opposed by the Presenting Officer. The Inquiry Officer held that she first submitted certificate of Doctor of J.P.Hospital, Bhopal and when advised to appear before the Panel Doctor of the Bank she submitted a certificate of Dr. Abha jain, the panel Doctor for getting extension. She



again submitted a certificate of Doctor of J.P.Hospital and when this fact was pointed out, she approached another panel doctor and today i.e. on 27-2-2006 she submitted a medical certificate of Doctor of J.P.Hospital and even then did not concede to her request I giving her time to cross-examine the prosecution witness. Her application seeking time has been filed and proved by her which is Exhibit W-5. Perusal of this application reveals that she stated in the application that she had approached one Mr. C.G.Nathani, Retired, A.G.M., State Bank of India to act as her Defense Assistant. She had sought permission of Disciplinary Authority to permit her to engage Mr. C.G.Nathani, retired AGM, State Bank of India or to engage the services of an Advocate in the light of Rule 9(1)(d) of the Service Code. She further stated in her application that she has now discussed her case with the Union Representative again and requested them to defend her in the inquiry in case the permission as sought by her is not granted by management, there response is still awaited. Also she stated that she is not in good health and is not in a position to participate in the departmental inquiry. She submitted certificate issued by Dr.K.K.Gidwani, Senior Medical officer, J.P.Hospital, Bhopal. Photocopy of these medical certificate has been filed and proved as Exhibit W-5A. thus according to the learned counsel for the workman, since she was not provided opportunity to defend herself, the inquiry is anything but against law and Rules of Industrial Justice.

Countering the submission, the learned counsel for Management has submitted that the charges levelled against her are quite serious. She always avoided to participate during the inquiry on medical grounds on the

basis of certificates issued by the Doctors just to delay the inquiry. The inquiry proceeded for as many as 15 dates due to the continuous adjournments sought by her on medical grounds. Hence the Inquiry Officer was not unjustified in refusing adjournments sought on medical grounds. Firstly the medical certificate was not issued by the doctor from the Panel of the Bank , secondly the medical certificate Exhibit W-5A nowhere indicates that she was advised bed rest by the doctor.

Learned counsel for management further submits that in the service code, a delinquent official against whom the inquiry proceeded is entitled to engage only a bank employee to act as Defense Assistant. Strangers i.e. persons who are not the employees of the Bank and Advocate are not permitted to be engaged as defense assistant or declared official, hence there was no illegality on the part of the management in refusing permission to the workman to engage a retired officer of State Bank or Advocate for her defence.

Learned Counsel for the management has referred to following decisions in favour of his submission:-

1. Dr.Yogiraj SHarma Vs. State of M.P. and Others (2016) 1 M.P.L.J 537 wherein it is held that until and unless prejudice caused and miscarriage of justice is not established, enquiry cannot be held to be vitiated-Onus lies on delinquent employee to establish, plead and prove prejudice. It is also held that merely non-supply of documents itself cannot be held ground to vitiate the inquiry.



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2. In another case Biswasri Mukherjee Vs. Punjab and Sind Bank (2021) 2 LLJ 250 Delhi held that "Petitioner's request to allow her to be represented in inquiry proceedings through legal practitioner was rejected by the Disciplinary Authority.

3. State Bank of India Vs. Hemant Kumar (2011) 11 SCC 355 it is held that when employee failed to participate in the inquiry despite three opportunities being given to him, the Inquiry Officer was justified in proceeding ex-parte in the inquiry.

4. Bank of India Vs. Apooa Kumar Saha (1994) 2 SCC 615 held that refusal to participate in the inquiry without valid reasons- violation of natural justice cannot be pleaded at later stage.

5. State Bank of India Vs. Bidyut Kumar Mitra (2011) 2 AIR SCW 798 held that when delinquent employee failed to point out as to what prejudice was caused and mere breach of Rule 50(ii) in not requisitioning documents from possession of Management would not give rise to presumption of prejudices.

6. State Bank of India Vs. Atrindranath Bhattacharyya and Another (2019) 8 SCC 134 held that there was a failure to avail repeated opportunity of hearing, another opportunity cannot be granted on the ground of justice. Delaying tactics cannot be rewarded.

From the perusal of the inquiry papers it comes out that several adjournments have been sought by the delinquent official on many grounds. The point arises is whether on the grounds on which the workman sought adjournments

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were medical grounds and sought adjournment of inquiry on 27-2-2006 by the Inquiry Officer was justified in law or not?

Perusal of her application and medical certificate filed on her behalf on 27-2-2006 during the inquiry before the Inquiry Officer which is proved is Exhibit W-5 and Exhibit W5A which goes to show that she sought extension on two grounds, firstly on her medical condition supported by certificate in which she was advised absence from duty for one month. Learned Counsel for the management has submitted that she was not advised bed rest but she was advised absence from office by the doctor meaning there by she was advised not to travel to her office and not to attend to any work in the office. Work meant and indicate inquiries also. The proceeding on 27-2-2006 goes to disclose that the Inquiry Officer did not record any finding that the medical certificate was not genuine. The adjournments were refused only because this certificate was not issued by the panel of the doctors. The management could not site any rule binding on employee to get treated only by the panel doctors. Right to get treated by the best doctors available and best available treatment is basic human right of a person which cannot be denied on the whims of any other.


Secondly perusal of Rule 9(1)(d) of Service Code makes it clear that the Disciplinary Authority can grant permission to employee to engage an Advocate or stranger who is not an employee of the Bank to act as defense Assistant. Exhibit W-5 an application goes to state that she had sought for permission refusal of which was conveyed to her only on 25-2-2006. She further stated that she had

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filed her representation to the Disciplinary Authority seeking review of his order, refusing permission pending with hi and that she has approached Union again to act in her defense, reply of the Union was awarded. If all these factors are considered, granting of one week or two week time to the workman for cross-examination of Management witness who were examined in her absence would have been fully justified in refusing time withholding the medical certificate non-genuine and other grounds as mentioned above not genuine was not justified on the part of the Management official. Hence on the basis of above discussion. I am of the considered view that the workman has successfully proved that her defense was prejudiced in the inquiry by not granting her time on 27-2-2006 by the Inquiry Officer to cross-examined Management witness. Hence the Departmental inquiry is held vitiated in law and Issue No.1 is answered accordingly.

As per law, the Management is entitled to be given a chance to prove the charges before this Tribunal, hence Management is at liberty to file all the witness in support of charge as well as documents I original after giving copy to workman side within two weeks from today and produce them for cross examination by workman on

15-11-2022


PRESIDING OFFICER