

**IN THE COURT OF SMT. PRANITA MOHANTY: PRESIDING OFFICER CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.II,
ROUSE AVENUE DISTRICT COURT COMPLEX: NEW DELHI.**

ID. No. 147/97

ORDER DATED:- 11/03/2022

Shri kalyan Das
Block No.1, P.O Bijwasan, New Delhi.

Workman

Versus

Indian Oil Corporation Ltd.,
World Trade Centre,
Baber Road, New Delhi.

Management

ORDER:-

This order is to decide a preliminary issue framed by order dated 13.05.2013 regarding the legality, fairness and adoption of Principles of Natural Justice in domestic inquiry conducted against the claimant workman.

The facts leading to the present dispute in short is that the claimant (since dead and substituted by the legal heirs) was appointed in Management Corporation as driver w.e.f 01.04.1965. He had served the corporation for 22 years with all sincerity and devotion. On 31.01.1996 when he was on duty of driving the oil tanker, had parked the vehicle near village Simalaka Delhi the helper of the taker with some ill intention was found draining out oil into a jerking from the parked tanker. He was caught red handed. The management initiated departmental inquiry against the claimant and charge sheet was served on him. An inquiry was conducted on the basis of the false allegation in a hasty manner without following the Principles of natural justice. The defence assistance provided to him was found to be a hand maid of the management corporation. At the end of the inquiry he was found guilty though the charges against him remained unproved. No attempt was made by the management to unfold the truth behind the draining out of the oil from the tanker. Not only that in the year 1970-76 he was implicated in another false case. The report of the inquiry officer was submitted holding the claimant guilty and on 21.10.1986 a showcause notice was served on him calling him to explain as to why the punishment of dismissal from service shall not be imposed on him. The reply submitted by him was not considered and the punishment of dismissal was served on him. Being aggrieved he raised a labour dispute before the conciliation officer. The conciliation failed due to non cooperation of the management and the appropriate government referred the matter to this tribunal to adjudicate if the action of the management in terminating the service of the claimant is legal and justified. If not to what relief he is entitled to.

The management being called upon to reply filed the written statement submitted that the claimant was engaged to drive the tanker lorry used for transportation of

fuel from one place to another. On 31.01.1986 he was caught red handed by the senior officers of the management when he with the help of the tanker name Shri Hardeo and one outsider was draining fuel from the tanker. After a preliminary inquiry a domestic inquiry was proposed and proper charge sheet was served on him. During the said inquiry the claimant was allowed to be represented by a representative of his choice and was assisted during the inquiry by one V.K Bhardwaj who is none other than a leader of the petroleum workers union and well conversant with the procedure of domestic inquiry. At the end of the inquiry which was conducted following the Principles of Natural Justice, the charges against the claimant were found proved. Thus, the inquiry officer submitted his report and another showcause notice was served on him to explain as to why the proposed punishment shall not be imposed. That showcause being found unsatisfactory punishment of dismissal was imposed. It is the stand taken by the management that all fair opportunity was allowed to the claimant during the inquiry and for the procedure followed keeping in mind the Principles of Natural Justice, the tribunal should not interfere with the same.

On these rival pleadings all together three issues were framed and by order dated 13.05.2013 the tribunal directed that issue no.1 be decided as a preliminary issue. Accordingly the claimant who was disputing the fairness of the inquiry was called upon to adduce evidence in support of his stand.

During the pendency of the inquiry the claimant Kalyan Das died and his son Jagdish kumar Sharma was substituted as a legal heir. During the hearing of preliminary issue said Jagdish Kumar Sharma testified as WW1 and exhibited no document. On behalf of the management one Sanjay Kumar the Manager employees relations of the corporation testified as MW1. He filed a series of document which have been marked as MW1/1 to MW1/12. Both the witnesses were cross examined at length.

During his examination the son of the deceased claimant stated that his father was serving the corporation with all sincerity and honesty. On a false allegation a disciplinary proceeding was initiated against him which culminated into the punishment of dismissal by order dated 30.04.1987. The punishment was disproportionate to the charge. The witness has further stated that the management with some ulterior motive had engaged a person as the defence assistant of his father who infact support the management instead of the claimant. In a bias manner the corporation excused the cleaner Hardeo Singh ignoring the statement of witnesses namely H.S Rawat, Raj kumar, Hardeo Singh whose statement were not recorded at the spot. The witness has further stated that a pre determined mind the punishment was inflicted on his father. He thereby prayed for a direction holding that the preliminary injuriy is vitiated for not following the Principles of Natural Justice.

The witness examined by the management has stated that the undisputed facts are that the claimant kalyan das the tanker driver was caught red handed while committing theft of the fuel by draining out the same from the loaded tanker. Charge sheet dated 20.02.1986 was served on him and acknowledgment was

obtained. The said acknowledgment has been marked as MW1/1. He has further stated that the claimant Kalyan das was caught red handed by some officers of the corporation. On 03.03.1986 Kalyan Das submitted his reply denying the charge and thus, the inquiry was initiated. By filing the copy of the notice marked as MW1/3 the management has stated that Kalyan Das was intimated about the date of the inquiry. On the request of Kalyan Das Shri V.K Bhardwaj was allowed to him as the defence assistant. At the end of the inquiry the report of the inquiry proceeding marked as MW1/4 was served on him and he was called upon to explain as to why punishment shall not be inflicted. The showcause notice has been marked as MW1/6. A document has been marked as MW1/7 which is the reply given by Kalyan Das seeking time. On 22nd December, 1986 Kalyan Das filed his reply to the showcause notice which has been marked as MW1/8. The witness has stated that in the said reply the claimant Kalyan Das had never whispered a word to say that the defence Assistant of his choice was not provided. Similarly the report of the inquiry officer the second showcause notice have been filed and exhibited.

At the outset of the argument the Id. A/R for the management corporation argued that the misconduct committed by the claimant being serious in nature and had directly affected the goodwill of the business of the management he was appropriately chargesheeted. He also argued that the claimant since disputes the fairness of the inquiry, the burden lies on him to show how the Principles of Natural Justice were violated. He also submitted that the claimant examined as WW1 though verbally stated about the unfairness of the inquiry has not succeeded in proving the same. Relying on the judgment of the Hon'ble Supreme Court in the case of **B.C Chaturvedi vs. Union of India reported in AIR 1996 SC 484** she submitted that the tribunal except examining the fairness adopted in the conduct of the inquiry cannot go to examine the merit of the evidence collected during the inquiry. On the other hand the Ld. A/R for the claimant submitted that under the scope of the section 11A the tribunal has wide power to examine the fairness of the inquiry as well as the materials establishing the prima facie liability of the delinquent employee.

It is a settled principal of law that the tribunal authorized to decide the dispute relating to punishment inflicted on a workman pursuant to a disciplinary proceeding is required to consider at the first instance if the domestic inquiry proceeding has been held properly and the same is valid. The departmental inquiry being a quasi judicial proceeding, as per different pronouncements is required to be done in an unbiased manner following the Principles of Natural Justice. In the case of **State Bank of Bikaner and Jaipur vs. Nemi chand Nalwaya** the Hon'ble Supreme Court have held that the courts will not act as an appellate Court and reassess the evidence laid in the domestic inquiry nor interfere on the ground that another view is possible on the materials on record. Not only that in the case of B. C. Chaturvedi vs. Union of India referred supra the Hon'ble Apex Court have held that the disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has co-extensive power to reappraise the evidence or the nature of the punishment. Adequacy of evidence or reliability of evidence cannot

be permitted to be canvassed before the Court/Tribunal. In **Union of India vs. H.C Goel (1964)4SCR781**, the Hon'ble Supreme Court held at page 728 that "if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

In this case the claimant workman has nowhere pleaded that proper opportunity to set up a defence was denied to him or the documents relied by the department were not supplied by the department. The only argument advanced is that the disciplinary authority without proper application of mind has passed the order which is not sustainable. But this argument of the workman is not accepted since the inquiry was held by a competent officer giving proper opportunity to the delinquent to setup his defence. The tribunal at this stage is only concerned to determine whether the inquiry was held by a competent officer following the rules of Natural Justice. There being no evidence to hold the contrary it is held that fairness was adopted in the conduct of the domestic inquiry against the claimant workman. From totality of the evidence available on record it clearly appears that the domestic inquiry was conducted against the workman following the procedure and principles of Natural Justice and the same cannot be held vitiated. Issue No. 2 is accordingly decided against the claimant and in favour of the management. Call the matter on _____ for argument to be advanced by both the parties on the proportionality of the punishment awarded.

Presiding Officer
11.03.2022