

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

ID. No. 110/2011

Shri Milind Goel,
S/o Shri Mam Chand Goel,
House No. 105, Mohalla- Chaklan,
Kankhal, Haridwar.

Workman

Versus

1. General Manager (HRD),
Punjab National Bank,
7, Bhikaji cama Place, New Delhi.
2. Chief Manager/ Circle Head,
Punjab National Bank,
Circle Office,
BHEL, Ranipur, Sector-4
Haridwar.
3. Sr. Manager,
Punjab National Bank,
Peeth Bazar, Jwalapur,
Haridwar.

Managements

ORDER:-

This order is intended to decide the preliminary issue framed by order dated 23.04.2013 regarding legality and fairness as well as adoption of the Principles of Natural Justice in the domestic inquiry conducted against the claimant.

The facts leading to the Industrial Dispute and relevant for deciding the preliminary issue is that the claimant Milind Goel was working as CTO in the PNB Branch at Peeth bazaar Jwalapur Haridwar. By an order dated 23.02.2008 the Senior Manager of the Branch placed him under suspension and a charge sheet dated 20.08.2008 was served on him alleging misconduct. Thereafter, the claimant was called upon to reply the charge sheet to which the claimant submitted his reply on 29.08.2008 challenging that the charge sheet has been signed by the Circle Head of the Bank, while in terms of HRD Division Circular No. 468 dated 26.06.2008 the Circle Head is the Appellate Authority. The Appellate Authority cannot be involved in the process of framing of charge. Considering his representation the management by order dated 20.09.2008 intimated him that the disciplinary authority is the Circle Head and if required the appellate Authority would be a person of higher rank. Thereafter, on 25.11.2008 the claimant was informed that one Prem Aggarwal Senior Manager of Branch Office Gurudwara Road Jwalapur Haridwar has been appointed as the Inquiry Officer and Shri R.K Seth Senior Manager of Peeth Bazar Branch Jawalapur would be the presenting

officer. The claimant against made a correspondence with the Chief Manager Op. No. 3 challenging the appointment of inquiry officer and presenting officer by letter dated 29.12.2008. But the opposite party did not respond to the same and decided to proceed with the inquiry. The claimant did not participate in the inquiry for the objections taken by him and also intimated that the charge is vague and the appointment of EO and PO is illegal. The management without paying any heed to the grievance of the claimant proceeded with the inquiry and concluded the same notwithstanding the non participation of the charge sheeted person i.e. the claimant. On 04.12.2009 the OP No. 3 served a showcause notice on the claimant after receipt of the inquiry report. In reply the claimant submitted his reply on 10.12.2009 requesting to set aside the disciplinary proceeding being conducted illegally. That representation too was not considered and the management passed the final order on 31.12.2009 inflicting the punishment on the claimant for discharge from service with superannuation benefit in terms of Para 6 (D) of Bipartite settlement dated 10.04.2002 with immediate effect.

Being aggrieved the claimant wanted to make an appeal and by writing a letter dated 06.02.2010 asked the management to inform him as to who would be the Appellate Authority in the matter. But the management remained silent and the reminder issued by the claimant was also not replied. Since the final order passed by the management was against the Principles of Natural Justice and the domestic inquiry was conducted in the most irregular manner the claimant raised an Industrial Dispute before the conciliation officer. For the non cooperation of the management the conciliation failed and the appropriate government referred the matter to this tribunal for adjudication.

Being noticed the management appeared and filed written statement refuting the stand taken by the claimant on fact as well as on law. It is the contention of the management that the claimant was found involved in serious misconduct tarnishing the image of the Bank and influencing its business. The respondent Bank enjoys high reputation amongst its clients. The allegation against the claimant was grave since he had issued a ATM Card in an in operative saving bank account of one Suraj Prakash Seth using the user Id and password of the clerk cum cashier of the Bank having name Rakesh Kumar. He also managed to verify the same using the user Id and password of Shri Sripal Bhardwaj, Manager of the Branch at Peeth Bazar Jawalapur, but did not handover the ATM Card to the account holder. Thereafter, he went on debiting money from the ODFD Account and crediting the same to the account of Suraj Prakash Seth on various dates and thereafter withdrew the money using the ATM Card of Suraj Prakash Seth. The management has further stated that the service condition of the claimant is governed by the provisions laid down in the bipartite settlement and awards popularly known as Desai Award and Shashtri Award. Following the said memorandum of settlement disciplinary action was taken against the claimant and procedure laid down in the settlement was scrupulously followed. But the claimant on some plea or other went on disputing the procedure, made correspondence with the authorities of the Bank but did not appear and participate in the proceeding. The inquiry officer had no other option than to conclude the inquiry and submit his report to the disciplinary

authority. The disciplinary authority served show cause notice on the claimant to which he again did not reply. All the queries made by the claimant were duly answered by the Bank management. Thus, the plea of the claimant that for improper conduct of the domestic inquiry he has been victimized and the order is liable to be set aside is based upon incorrect interpretation of fact and law.

On these pleadings the tribunal by order dated 23.04.2013 had framed 3 issues and directed that issue no.1 shall be heard as preliminary issue.

Being called upon the claimant examined himself as WW1 and filed certain documents marked as Annexure1 to Annexure 25. All these documents include the charge sheet, the report of the inquiry officer, different correspondences made by the claimant with the bank management disputing the appointment of inquiry officer, presenting officer, authority of the persons serving the charge sheet etc. On behalf of the management Prem kumar Aggarwal the inquiry officer of the management Bank testified as MW1. In addition to that the Bank has filed several documents which include the copy of the charge sheet copies of the correspondences made by the claimant disputing the steps taken during the inquiry copy of the inquiry report, copy of the entire inquiry proceeding, copy of the showcause notice dated 04.12.2009 served on the claimant, reply given by the later and copy of the order dated 31.12.2009 served on the claimant.

During course of argument the Ld. A/R for the management submitted that the claimant has admitted the inquiry proceeding and the report submitted by the inquiry officer. From the proceeding of the inquiry it is evidently clear that the claimant having knowledge about the proceeding and being duly served with the notice opted not to participate in the same on some technical grounds. This clearly shows that the claimant had voluntarily opted out of the inquiry. On receipt of the inquiry report a notice to showcause was served on him and he again decided not to showcause leading to passing of the final order. He thereby argued that there is no infirmity in the domestic inquiry proceeding and order and the tribunal cannot interfere with the managerial decision. In the counter argument the claimant submitted that during the entire inquiry proceeding the procedure laid in the bipartite settlement was flouted and on that count alone the preliminary issue be decided in favour of the claimant. He also argued that at this stage the tribunal has to examine if the Principles of Natural Justice were violated during the domestic inquiry or not. Relying upon the judgment of the Hon'ble Supreme Court in the case of **B C Chaturvedi vs. Union of India reported in AIR 1996484** the management submitted that the tribunal, except the examining the fairness adopted in conduct of the inquiry cannot go to examine the merit of the evidence collected during inquiry. On the other hand the Ld. A/R for the claimant submitted that under the scope of 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 delinquent employee.

Clause 19point 1, 2 of the bipartite settlement dated 19th October 1966 and clause 14 of the Bipartite settlement dated 10.04.2002 lays down the procedure to be adopted in the disciplinary proceeding initiated against the employee of the Bank.

Previously Labour Courts and Industrial Tribunals were not competent to interfere in the decisions of the management unless there was violation of the Principles of the Natural Justice basic error of fact, perversity and victimization. Now the Labour Court can go into the justification of the action taken against the employee. However, it is beyond dispute that for deciding the preliminary issue the tribunal is required to examine whether the Principles of Natural Justice were violated and the order was passed mechanically making the same a malafide order.

In this case as seen from the documents the departmental inquiry against the claimant was initiated after an objective assessment of the situation by the Bank and not as a result of dictation or direction by an extraneous authority. The claimant has pleaded that from the very beginning he was disputing the procedure adopted in the inquiry but the management without paying any heed to his objections exercised the power malafidely. Such malafide action of the management amounts to victimization of the claimant and makes the inquiry vitiated. The law is well settled that the burden of establishing malafides lies heavily on the person who alleges it. The onus of proving victimization is always on the employee who has to prove the same in affirmative. In the case of **Union of India vs. Ashutosh Kumar Shrivastav (2002) I SCC 188** the Hon'ble Supreme Court have held that there is always a presumption in favour of the administration that it exercises power in good faith and for public benefit.

In this case as seen from the inquiry proceeding all the steps taken right from framing of charge to appointment of inquiry officer were duly intimated to the claimant. The inquiry was conducted in terms of clause 14 of the bipartite settlement dated 10.04.2002. The inquiry report further reveals that after giving several opportunities to the claimant for his appearance and participation at last he was proceeded exparte and the order was passed. From the report of inquiry and proceeding of inquiry there is nothing to believe that the Principles of Natural Justice were violated. From the said proceeding it is otherwise evident that the claimant having knowledge of the proceeding opted out of the same. If at all he was not satisfied with the procedure adopted he could have participated in the proceeding to raise the objections in the said proceeding. Or else he could have challenged the procedure adopted and the authority of the Inquiry Officer, Presenting Officer, Appellate Authority and the person who served the charge head on him in the court of law. Having not done so and having opted not to participate in the inquiry the claimant cannot take a stand that due procedure was not adopted in the inquiry and there was violation of the principles of natural justice.

Thus, from the totality of the evidence and materials available on record it clearly appears that the domestic inquiry against the workman was conducted following the procedure and the Principles of Natural Justice and the same cannot be held vitiated. Issue no.1 is accordingly decided against the claimant and in favour of the management. Call the matter on _____ for argument on the proportionality of the punishment awarded.

Presiding Officer.
21st February, 2022.