

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/R/43/2013 Hare Singh V/S Western Coal Field		
12.04.2024	Matter taken up. None present for workman. Management is represented by its learned Counsel. Heard argument on preliminary issue and perused record. The preliminary issue is as follows :- Whether the departmental enquiry conducted is legal and proper ? Case of the workman is that the enquiry was conducted without following the rules of procedure and also in disobedience of principles of natural justice. Management has rebutted this allegation. Both the parties have led oral and documentary evidence. The charge against the workman is under Clause-26.24 and 26.30 which is as follows :- <u>26.24.</u> Habitually absenting from duty without prior information or sufficient reason. <u>26.30.</u> Absenting from duty without getting leave sanctioned or without sufficient reason or over staying for more than 10 days after expiry of period of sanctioned leave. Perusal of enquiry record and statement shows that the case of the workman was that he was ill due to abscess in his leg and Typhoid and was under treatment in the hospital. It also comes out that he participated and appeared before the enquiry officer on one day and sought time. He did not appear on the next day fixed and evidence of management witness was recorded. The enquiry was concluded on that date. Hence, at least he was in the know of the enquiry against him. It comes out that the copy of the enquiry report was never served on him and the disciplinary authority imposed the punishment without issuing show cause and without giving the workman any opportunity to have his say on the findings and punishment.	

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	It has been submitted from management that the certified standing orders do not provide for supply of enquiry report and have the say of the workman before passing punishment order. In the case of ECIL Haidarabad vs. B. Karunakar 1994 SC 1074, a five Judges Bench has laid down following principle of law. The relevant paragraphs are being reproduced as follows :- 2. <i>The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:</i> (i) <i>Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?</i> (ii) <i>Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?</i> (iii) <i>Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?</i> (iv) <i>Whether the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) will apply to all establishments- Government and non-</i> <i>Government, public and private sector undertakings?</i> (v) <i>What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?</i> (vi) <i>From what date the law requiring furnishing of the report should come into operation?</i> (vii) <i>Since the decision in Ramzan Khan's case (AIR 1991 SC 471)</i>	

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	(supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990? “Hence the incidental questions raised above may be answered as follows: (i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. (ii) The relevant portion of Article 311(2) of the Constitution is as follows: "(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges." Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. (iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him. (iv) In the view that we have taken, viz., that the right to make	

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	representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly. (v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and	

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	give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should nut mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a: difference to the result in the case that should set aside the order of punishment Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.” Keeping in view the aforesaid proposition of law settled by five Judges Bench, in the light of facts and circumstances of the case in hand, it cannot be safely said that non supply of enquiry report to the workman and passing a punishment order without providing opportunity of hearing to the workman, has not prejudiced his defense. Accordingly, holding	

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	the departmental enquiry conducted against law, the preliminary issue is answered accordingly. In the light of pleading of management, it is given an opportunity to prove the charges before this Tribunal. List on _____ for evidence of management in support of the charges. The management shall file the affidavit of its witnesses in support of the charge as well documents within 4 weeks from today after giving to the copy to the workman side and produce them for cross examination on date fixed. S Presiding Officer	