

**BEFORE SHRI. A.G. MAGARE, PRESIDING OFFICER,
SECOND LABOUR COURT, PUNE.**

REFERENCE(IDA)NO. 266 OF 2023(D)
(CNRNO MHLC120006822023)

Shri. Pawan Rajkumar Swami.

Through – Lakkalyan Mazdoor Union,
54, Budhwar Peth, Kaka Kuwa Mansion,
Laxmi Road, Pune – 411 002

... **APPLICANT.**

V E R S U S

M/s. Suresh Indu Lesers Pvt. Ltd.

Handewadi Unit-6, Katraj-Saswad Bypass Rd.,
Urali Devachi, Tal. Haveli,
Dist. Pune – 412 308.

... **RESPONDENT.**

C O R A M : SHRI. A.G. MAGARE, PRESIDING OFFICER.

Appearances : Shri. R.B. Sharmale, Advocate for Applicant.

Shri. A.D. Patwardhan, Advocate for Respondent.

ORDER ON PRELIMINARY ISSUES
(PASSED ON: 10/10/2025)

1] This is a reference under Section 2(A) of the Industrial Disputes Act 1947 (hereinafter referred to as the I.D.Act,1947) for adjudication of the dispute between parties in respect of reinstatement of applicant in the establishment of respondent company with continuity of service and full back wages and consequential benefits. Wherein, the issue of fairness of enquiry and its findings also arose between parties and the same is accordingly taken up for passing order on it.

2] According to the applicant, he was working in the respondent company as a Helper since last 2 years. Wherein, his last drawn wages were Rs.11,700/- p.m. and his entire service record was clean and unblemished. Despite, he was

issued with false charge sheet dated 30.01.2023. Upon which, the enquiry conducted against him by the respondent is not in accordance with the principles of natural justice. Because, an enquiry officer while concluding the said enquiry, has failed to appreciate the evidence adduced before it and wrongly held guilty him for the charges as mentioned in charge sheet. Therefore, he submitted that, the enquiry conducted against him be declared as not fair and proper as well as the findings of the enquiry officer be declared as perverse.

3] In response the respondent appeared and filed its written statement below Exh.C-4, by which denied the entire contentions of the applicant, in respect of manner of conducting enquiry against him and its finding. Because, the said enquiry was conducted against applicant on the basis of charge-sheet issued to him on 30.01.2023 under Model Standing Orders 24(a) (c) (m) & (l) applicable to its company, for the misconduct of instigating to other other workers. Wherein, he and used threatening language to Shri. Kiran Gaikwad, official of the company. Thereafter, the workers were incited to "work slowly and slowly and due to, caused maximum financial loss to its company. Besides the explanation tendered by the applicant to the aforesaid charge sheet was found unsatisfactory.

4] Therefore, an enquiry was conducted against applicant into the charge sheet under Model Standing Orders 4(a) (c) (m) & (l) therein, applicant has fully participated and he was given sufficient opportunity to defend those charges levelled against him and he cross examined the witnesses of its management at length and also examined witness in his defence. Thereafter,

applicant has also submitted his defence statement. Wherein, upon conclusion of the enquiry, an enquiry officer submitted its report and findings of dated 10.08.2023 therein, applicant found guilty for aforesaid charges. Thereafter, considering proved misconduct of applicant in the aforesaid enquiry and his past service record, he was issued with dismissal order of dated 07.09.2023. In the circumstances, an enquiry conducted against applicant is just and proper and its findings are not perverse and based upon the same, the dismissal of applicant from its company is just and proper. Hence, the reference deserves to be dismissed with cost.

5] Considering the pleadings made by both the parties, this Court has framed the Issues below Exh.O-2 and out of which Issue No.1 and 2 treated as Preliminary Issues and accordingly, I record my findings to the same together with reasons thereon as under:

Sr No.	ISSUES	FINDINGS
1.	Whether the applicant proves that, the enquiry conducted against him is not fair, proper and against the principles of natural justice ?	In the affirmative.
2.	Whether applicant proves that, findings of the enquiry officer are perverse ?	In the affirmative

REASONS

AS TO ISSUE NO.1 AND 2 :-

6] In the above back ground, the matter was kept for arguments on Preliminary Issues, accordingly, the Ld. Advocates

for both the parties argued at length. Wherein, the respondents filed on record the original proceeding of enquiry conducted against the complainant, below list Exh.C-5 & also written synopsis of his arguments below Exh.C-7.

7] Heard. Wherein, Ld. Advocate for applicant in support of his argument has relied upon the following reported and unreported judgments filed alongwith list Exh.U-2

i] Union of India & Ors. V/s. Mohd. Ramzan Khan 1990 STPL 6418 SC/AIR 1991 SC 471

ii] Volkswagen India Pvt. Ltd. V/s. Deepak Nanasaheb Nagtilak. Writ Petition No.11761/2024 decided on 05.07.2024. Hon'ble Bombay High Court.

8] Heard. Having regards to the submissions made by Ld. Advocates for both the parties and it is evident from the enquiry proceeding filed at Exh.C-5 that, charge sheet issued was issued to the applicant on 30.09.2023 under Clauses 24(a) (c) (m) & (l) of Model Standing Orders framed under the provisions of Maharashtra Industrial Employment (Standing Order) Rules, 1959 against the applicant. By which, it is stated that, the applicant instigated to other other workers and used threatening language to Shri. Kiran Gaikwad, official of the company. Thereafter, the workers were incited to "work slowly and slowly and due to, caused maximum financial loss to its company.

9] Accordingly, an enquiry was conducted against applicant into the charge sheet under Standing Orders Clauses 24(a) (c) (m) & (l). Wherein, prima facie it is evident from the record that, the applicant, on 13.03.2023, had submitted an application seeking permission to engage an Advocate as his defence

representative in the domestic enquiry. However, it appears that, the said application remained undisposed of, as no order was passed thereon by the enquiry officer. The failure to decide such an application and to afford the applicant an opportunity to be defended by a representative of his choice amounts to a denial of reasonable opportunity of defence. Consequently, the enquiry officer's conduct is found to be in breach of the principles of natural justice, thereby rendering the enquiry procedurally defective.

10] Besides, it is seen from enquiry proceeding that, during the pendency of the enquiry, amended charge sheet was issued to the applicant. There is no enabling provision under law which permits the issuance or service of an amended charge sheet once the enquiry has already commenced. Such action, being contrary to the settled principles of natural justice and the prescribed procedure, vitiates the entire enquiry process. Consequently, the findings recorded by the Enquiry Officer, being the outcome of such irregular and impermissible proceedings, are apparently perverse and unsustainable in the eyes of law.

11] Moreover, it is apparent from the record that, the applicant was not furnished with a copy of the findings of the enquiry officer. The non-communication of the enquiry findings to the applicant before the issuance of the final order constitutes a serious lapse on the part of the management. It deprived the applicant of an opportunity to make an effective representation or to offer his comments against the adverse findings recorded in the enquiry. Such omission goes to the root of procedural fairness and is a clear violation of the

principles of natural justice, particularly the rule of audi alteram partem. Consequently, the failure to supply the findings of the enquiry officer to the applicant before taking any decision on the same renders the entire enquiry process legally infirm and vitiated in law.

12] Apart it is also clear by the reported judgment **Hon'ble Supreme Court** in the matter of **Union of India & Ors** and unreported judgment of our **Hon'ble High Court** in the matter of **Volkswagen India Pvt. Ltd.** (supra) as referred by the Ld. Advocate for the applicant that, non-supply of the enquiry report to the delinquent employee before passing the order of dismissal causes clear prejudice to the employee and amounts to a violation of the fundamental principles of natural justice. The delinquent must be afforded a fair opportunity to contest or comment upon the findings of the enquiry officer before any punitive action is taken. Failure to adhere to this mandatory procedural safeguard renders the disciplinary action and the enquiry proceedings vitiated in law. In view of the foregoing observations, I am of the opinion that, the enquiry conducted against the applicant cannot be said to be fair and proper.

13] So far as the findings of the enquiry officer are concerned, it is the contention of the applicant that, the enquiry officer, while concluding the enquiry, has not properly appreciated the evidence adduced before him and the findings recorded are perverse and contrary to the material on record. Such conduct clearly demonstrates that, the enquiry officer has failed to apply his independent mind to the evidence and has recorded findings on extraneous considerations, without due evaluation of the applicant's defence. Besides, seen original inquiry

proceeding filed at Ex C-5 that, an enquiry officer has referred and mentioned the documents, which are neither part or relevant to subject or dispute between the parties nor applied his mind properly and he just used to copy paste portion and documents of one matter to other matter and thus, it clearly shows that, an enquiry officer acted and concluded enquiry as per his will & whims & whisper. Moreover, it is a settled principle of law that, a domestic enquiry being quasi-judicial in nature, the enquiry officer is under a legal obligation to analyze and appreciate the evidence in a fair and objective manner and to record reasoned findings based on such evidence.

14] In addition, it is seen by reported judgement of **The Hon'ble Supreme Court** in the matter of **Nand Kishore Prasad v. State of Bihar, AIR 1978 SC 1277**, wherein it is held that, where the findings of the enquiry officer are based on no evidence or are such that no reasonable person could have arrived at, then, the same are perverse and unsustainable in law. Similarly, the **Hon'ble Supreme Court** in the matter of **Union of India v. H.C. Goel, AIR 1964 SC 364**, has observed that, a findings recorded without proper consideration of the evidence amounts to non-application of mind and vitiates the enquiry. In the present case, the report of the enquiry officer discloses total non-application of mind. Moreover, the findings appear to be based on the whims and impressions of the enquiry officer rather than on any reasoned appreciation of evidence. In that view of matter & circumstances, Such a report, unsupported by analysis or reasoning, is liable to be termed as perverse and cannot stand judicial scrutiny. Accordingly, I am of the opinion that, the findings of the enquiry officer required to

be held as perverse. I therefore answer Issue No.1 & 2 in the affirmative and proceed to pass the following order;

ORDER

1. The enquiry conducted against the applicant is not fair, proper and is against the principles of natural justice.
2. The findings of the enquiry officer are perverse.
3. Matter be proceeded further for remaining issues.

**PLACE : PUNE.
DATE : 10/10/2025.**

**(SHRI. A.G. MAGARE.)
PRESIDING OFFICER,
SECOND LABOUR COURT, PUNE.**