

**BEFORE THE JUDGE, LABOUR COURT, AMRAVATI.**

**Complaint (ULP) No. 45 of 2018**

CNR No.MHLC270001802018

Nilesh Vasantao Kadam,  
Aged about 36 Yrs, Occ. At present Nil,  
R/o Arvind Sawalapurkar's Wada,  
Marwadi pura, Jayasthambha Chowk,  
Navi Wasti, Badnera, Amravati,  
Tah. & Dist. Amravati.

..... **COMPLAINANT**

**Versus**

The Amravati District Central  
Co-Operative Bank Limited,  
through its Chief Executive Officer,  
Camp Road, Irwin Chowk, Amravati,  
Tah. & Distt. Amravati.

..... **RESPONDENT**

**ORDER ON PRELIMINARY ISSUE Nos. 1 & 2 .**

( Passed on 15.12.2020)

This Complaint is filed under Section 28 read with Item 1 of Schedule IV of MRTU & PULP Act.

2] According to complainant, he is employee of respondent, which is an 'industry'. The respondent has indulged in unfair labour practice due to dismissing the complainant from the services by order

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dt. 18-08-2018. It is stated that the complainant was initially appointed as Daily-wager since 05-09-2006. Thereafter he was absorbed in the services of respondent since 03-12-2007 on the post of 'Peon'. When he was working at regional office, Achalpur departmental enquiry was initiated against him in the year 2014. In that enquiry his three increments were permanently barred by the respondent. Even then, he claims that his service record is clean and unblemished. He further stated that the respondent again initiated departmental enquiry against him by order dt. 30-12-2016. The complainant was ill and had filed application for leave along with medical certificate. Charges under Rule 30(1) and 30(7) of the respondent Bank Service Rules were levelled against him. They are in respect of 'misconduct' and 'unauthorized absence'. According to complainant, the chargesheet was deliberately issued by searching for misconduct. The charges are vague, false and baseless. Already on said ground his three increments were barred.

3] It is further stated that the complainant had already submitted leave application for various reasons. He had applied for only 70 days leave. However, he was charged for absence of 177 days. The respondent has already punished the complainant for 107 days absence. The charges are vague and baseless. No statement of leave was filed in the departmental enquiry. He has not committed any misconduct. He replied the chargesheet, however it was not taken into consideration. The Enquiry Officer was bias. She had not granted fair and proper opportunity to the complainant to defend himself in the enquiry proceedings. Necessary documents were not supplied, which has caused serious prejudice to the complainant. The

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Enquiry Officer has acted as prosecutor. The principles of natural justice were not followed. The punishment imposed is shockingly disproportionate.

4] It is further submitted that very short period of three days was given to the complainant to reply the show cause against the dismissal punishment and copy of enquiry report was not supplied to him. As such fair opportunity to defend the charges was not given in the enquiry. Copies of roznama and statements of witnesses were also not supplied. Due to all these grounds, the enquiry is not fair and proper and liable to be vitiated. The order of dismissal is liable to be quashed and set aside. On the these grounds, the complainant has prayed to declare that the respondent has indulged in unfair labour practice and to declare that the enquiry was not fair and proper and to vitiate it. He has prayed to set aside the dismissal order dt. 18-08-2018.

5] The respondent opposed the complaint by filing written statement vide Exh.C-8. It is denied that the respondent is an industry and indulged in unfair labour practice. It is denied that the complainant was illegally dismissed. It is admitted that the complainant was appointed as daily-wager initially and lateron absorbed as Peon since 03-12-2007. It is undisputed that in the year 2014 when the complainant was working at Kalamkhar Branch enquiry had been initiated against him. It is admitted that his three increments were permanently barred after holding him guilty of the charges. Further, it is submitted that service record of the complainant is not clean and unblemished. It is submitted that by

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order dt. 30-12-2016 fresh enquiry was directed against the complainant. It is submitted that all the documents were submitted to the complainant. It is denied that the complainant had submitted the leave application for absence. It is denied that the period of absence for which the complainant was punished was again included in subsequent chargesheet. It is denied that the charges were vague, false and baseless. It is denied that the complainant has punished twice for the same charges. According to respondent, enquiry was fair and proper. The principles of natural justice were followed.

6] Further, it is submitted by the respondent that the Enquiry Officer was impartial and not bias. Full opportunity to defend was given to the complainant. It is denied that the complainant was on medical leave as claimed by him. It is denied that the enquiry report was not submitted to the complainant. The respondent alternatively prayed for permission to prove the misconduct against the complainant if it is held that the enquiry is not fair and proper or the findings of the Enquiry Officer are perverse.

7] It is submitted that the complainant was habitual to remain absent. There was no improvement in his conduct. In earlier enquiry charges were proved against him. At that time, he had submitted undertaking/guarantee letter and accepted punishment also. He assured that he will not repeat mistake /misconduct in future. Therefore, leniency was shown to him and he was posted at Regional Office Achalpur. Even then, there was no improvement in his behaviour. On the report of concerned officer about the absence

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without intimation since 18-03-2018 to 31-09-2018 enquiry was initiated against him. After issuance of chargesheet the complainant submitted reply to it. He had engaged Advocate to defend him. Many opportunities were granted to him to attend the enquiry. After full enquiry, report was submitted by the Enquiry Officer. It is held that charges levelled against him are proved. Thereafter the respondent decided to impose punishment and show cause notice was issued to the complainant considering his guilt and past service record. As such, the dismissal of the complainant is legal and proper. The punishment is proportionate with proved misconduct. On these grounds, the respondent has prayed to dismiss the complaint.

8] Issues are framed vide Exh.O-1. At this stage it is necessary to decide Issue Nos.1 and 2 as a Preliminary Issues. Hence, they are reproduced along with findings thereon.

**ISSUES**

**FINDINGS**

- |    |  |           |
|----|--|-----------|
| 1] | Whether the complainant proves that enquiry conducted by the respondent is unfair, improper and not according to the principles of natural justice ? | ....Yes.  |
| 2] | Whether the complainant proves that the findings of Enquiry Officer are perverse ?   | .... Yes. |

### REASONS

9] As to Issue Nos.1 & 2 : Heard the learned advocates for both parties and gone through copies of enquiry proceedings produced on record. Admittedly, the complainant was working as Peon with the respondent since 05-09-2006. He was absorbed in the services on 03-12-2007. It is undisputed that in the year 2014 departmental enquiry was held against the complainant due to unauthorized absence. In that enquiry the complainant was held guilty and three increments for the year October 2013, 2014 and 2015 were barred. Thereafter again by order dt. 30-12-2016 departmental enquiry was initiated against the complainant. Advocate Smt. Nilija S. Raut was appointed as Enquiry Officer. The respondent has produced copies of all the documents vide list Exh.C-9. It is seen from document No.1 that the complainant was allowed to inspect all the relevant documents from the office. He was given opportunity to reply the chargesheet and appointment of representative also. The issuance of chargesheet by the respondent itself is disputed by the Ld. Advocate for the complainant. It is submitted that prior to considering the reply of complainant to the chargesheet the Enquiry Officer was appointed by the respondent. According to him, it shows the predetermined mindset of the respondent to conduct the enquiry against the complainant and, therefore, enquiry proceedings is illegal.

10] In support of his submission the Ld. Advocate for the complainant has relied on the decision in the case of S. B. Patel V/s Gujarat State Civil Supplies Corporation Ltd. and another, [ 2016

**LAB. I. C. 4068]**. It is held in this case that “*appointment of Enquiry Officer before issuance of chargesheet indicates pre-determined mindset bent upon proceedings against delinquent. Such pre-determination cannot be said to be bonafide and discloses biased attitude against delinquent.*” He further relied on the decision in the case of **State of Panjab V/s Khanna and others**, [ AIR 2001 S.C. 343] wherein it is held that “*announcement of enquiry officer even before receipt of reply of delinquent employee to chargesheet shows bias. It is well settled Service Jurisprudence that the authority has to apply its mind upon receipt of reply to the chargesheet or show cause as the case may be, as to whether a further enquiry is called for. In the event upon deliberations and due considerations it is in the affirmative- The enquiry follows but not otherwise. Thus, where even before reply was filed by the delinquent chief Secretary to the chargesheet issued against him, the Chief Minister made an announcement appointing an enquiry officer to go into the charges, thus indicating its mindset that the enquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent was free and fair.*”

11] On the other hand, the Ld. Advocate for the respondent has relied on the decision in the case of **Aligarh Muslim University and Ors. V/s Mansoor Ali Khan**, [ 2001 (91) FLR 28]. Wherein it is held that *in addition to breach of natural justice prejudice must also be proved.* He further relied on the decision in the case of **Dr. Keshab Chandra Panda V/s Vice Chancellor, Sambhalpur University and others**, [ 2019 LAB I. C. 357 ]. In this case it is held that when delinquent participated in the enquiry even after appointment of

enquiry officer simultaneously with the framing of the charges and before submission of defence written statement by delinquent then disciplinary enquiry not liable to be interfered.

12] In the case in hand, it is seen that by letter dt. 12-02-2017 enquiry was directed against the complainant and at the same time Enquiry Officer was appointed prior to getting reply of the complainant to the chargesheet. It is seen that the complainant had submitted his reply to the chargesheet to the Enquiry Officer itself on 23-02-2017. Thus, it is seen that the respondent was pre-determined to conduct the enquiry against the complainant.

13] It is submitted on behalf of complainant that copies of documents were not supplied to him. The roznama, enquiry papers as well as the documents relied during the enquiry are not supplied to him. It is further claimed that sufficient opportunity was not given to him. Therefore also the enquiry was not fair. He has relied on the decision in the case of *State of U.P. v/s Shatrughan Lal 1998 II CLR 857*. In this case it is observed that *non supply of documents and copies of statements recorded during the preliminary enquiry resulted in not giving to the respondent an effective opportunity to defend himself*. In this case, after going through the order dt. 13-02-2017 directing the enquiry, it is seen that the complainant was permitted to inspect the documents during the office hours. In the cross examination of Shri Belsare witness of the respondent he has admitted that certain copies of applications were not provided to the complainant. However, in view of liberty granted to the complainant to inspect documents in the office, it cannot be said that those documents were  
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not made available to the complainant. In respect of receipt of copies of roznama, enquiry proceedings there is acknowledgment of complainant on the enquiry papers itself. It is seen that from time to time copies were given to the complainant. As such there is no substance in the submission of complainant on that point.

14] The next submission of Ld. Advocate for the complainant is that the charge was vague, therefore, the enquiry was not fair. The copy of charge is attached as Schedule II in the enquiry paper. Two charges were levelled against the complaint First that enquiry was held against him earlier in which he was held guilty, he had assured to improve his behaviour and submitted undertaking in writing on stamp paper of Rs.100/-. Even then, his behaviour was not improved. Therefore, it amounts to disobeying the office order and he thereby committed breach of Rule 30(1) of Service Rule. Second charge is to the effect that since September, 2015 he remained absent without previous intimation for 177 days, said period is leave without pay, due to his absence obstruction was caused in the office work. In spite of repeated oral and written intimation, show cause notices there was no improvement in his behaviour. Therefore, he committed misconduct as per Rule 30(7) of Service Rule. After going through these charges it is seen that in charge No.1 it is not clearly mentioned which office order was disobeyed by the complainant and thereby he committed breach of Rule 30(1) of the Service Rule. In charge No. 2 it is not mentioned specifically since when the complainant was absent and till which period he was absent and how absence of 177 is calculated. As such it is seen that the charges levelled against the complainant are vague.

15] In the case of Miraj Taluka Girni Kamgar Sangh V/s Manager, Shri Gajanan Weaving Mills [ 1991 CJ (Bom) 334 ] it is held that *an employee faced with a vague charges that he is guilty of a described type of misconduct, would be extremely hard put to defend himself against the charge unless he is informed such particulars as would enable him to give an effective reply thereto and demonstrate that the charges are false or otherwise not acceptable.* In the case of G. V. Aswathanarayana V/s Central Bank of India, by Chairman and others[ 2003 CJ (Kar) 230]. it is held that *it is well settled that if a charge memo issued to a delinquent employee is defective in substantial terms, then the enquiry proceedings and the final order that may be made on the basis of such defective charge memo would be vitiated and only on that ground the penalty imposed on the delinquent is liable to be quashed. Further it is held that it is trite that chargesheet is the charter of disciplinary action. The departmental enquiry commences with the service of the chargesheet. The chargesheet should specifically set out all charges which the delinquent is called upon to show cause against and should also state all relevant particulars and details without which delinquent cannot defend himself.* Considering the ratio laid down in these cited decision it appears that there is substance of the complainant that the chargesheet is defective and vague.

16] During the course of enquiry the complainant was represented by Advocate Shri Mohare. Number of times notices were issued by the Enquiry Officer to the complainant to remain present in the enquiry. Full opportunity was given to him for appearance in the

enquiry and to contest it. During the course of enquiry evidence of Shri C. D. Belsare was recorded. The defence statement of complainant was also recorded. It has come in the evidence of Shri Belsare that the complainant was habitually remained absent. Show cause notices were issued to him. He had submitted undertaking in writing. He deposed that the complainant was absent for 177 days since September 2015. His absence was granted as leave without pay. It is seen that there is no single documentary evidence in support of his evidence. In the cross examination he admitted that the complainant had filed leave applications on certain times and those were allowed. Thereafter his absence was granted as leave without pay. He failed to state under which rules undertaking of complainant was obtained. His evidence shows that for want of sufficient leave balance of complainant leaves were granted without pay. He admitted that attendance register / muster is not produced in the enquiry. Therefore, it cannot be specifically seen, since which date and till when the complainant was absent.

17] It is seen that Enquiry officer has held that both charges against the complainant stands proved. Charge No.1 is held to be proved on the ground that there was no improvement in behaviour of the complainant inspite of submitting written undertaking, it has observed that such behaviour amounts to disobeying the office order. It is seen that there is no reference of specif rule or order which is disobeyed. It is perverse. In respect of findings of chage No.2 also it is seen that without mentioning specific period it is held that the complainant was absent for 177 days since September 2015 and his leave were granted without pay. The Enquiry Officer casted burden

on the complainant by observing that he had failed to produce evidence to show that he had submitted application prior to proceeding on leave. In fact, burden lies on the respondent to prove that the complainant was unauthorizely absent for 177 days. It is necessary to consider here that the complainant had disputed the period of absence. According to complainant, already he was punished for absence of 107 days in earlier enquiry and his three increments were stopped permanently. He was not absent for 177 days.

18] After going through the copies of service rules, it is seen that as per Rule 30(1) unauthorize absence for more than 8 days amounts to misconduct. As per Rule No. 27 (G) it is provided that absence without intimation can be considered by granting said period as leave without pay. In this case already said period is granted as leave without pay. Therefore, it cannot be accepted that complainant was absent without intimation and committed breach of Rule 30 (7) of Service Rule.

19] The learned advocate for the complainant submitted that the copy of enquiry report was not supplied to the complainant and hence principle of natural justice was not followed. In support of his submission he relied on the decision in the case of *Indian Sugar and General Engineering Corporation v/s Labour court Ambala 1996 (1)L.L.N.967* and in the case of *Union of India v/s Mohamed Ramzan Khan 1991(1) L.L.N.380*. In the case of Indian sugar it is held that the supply of the enquiry report was necessary. Judgement in the case of Mohamed Ramzan case is considered in it. In the case

of Mohamed Ramzan (cited above) it is held that “*the supply of the copy of enquiry report along with recommendations if any, in the matter of proposed punishment would be within the rules of natural justice and delinquent government employee would therefore entitled to supply of the copy thereof.*”

20] On the other hand the learned Advocate for the respondent has relied on the decision in the case of *Ashish kumar Baxi v/s Bank of Baroda 2004 CJ (All)95.* In this case the judgement in the case of Mohamed Ramzan is referred. It is held that “*13. The next submission raised by the learned counsel for the petitioner was that he was not supplied a copy of the inquiry report and as such the principles of natural justice have been violated. The counsel for the petitioner placed reliance upon the decision of Union of India and Ors. v. Mohd. Ramzan Khan AIR 1991 SC 471. The aforesaid decision of the Supreme Court was considered subsequently by the Supreme Court in the case of Managing Director, E.C.I.L. Hyderabad, etc., etc., v. B. Karunakar etc, etc. AIR 1994 SC 1074, and in the case of Oriental Insurance Company Ltd. v. S. Balakrishnan 2001 (2) AWC 1443 : AIR 2001 SC 400. The Supreme Court in para 2 held as follows :*

*"The question, however, still remains to be considered is whether the High Court was justified in interfering with an order of punishment passed by the disciplinary authority merely on the ground that non-supply of enquiry report has vitiated the entire proceedings. It had not been brought to the notice of the learned Judges of the Court that the judgment of this Court in Ramzan Khan has already been considered by*

*this Court in the case of Managing Director, E.C.I.L. Hyderabad v. B. Karunakar AIR 1994 SC 1074, which is a Constitution Bench decision of the Court, and which clarifies the entire position. Without being aware of the correctness of law, the High Court appears to have interfered with an order of dismissal passed in a disciplinary proceedings in grave charges like the one with which we are concerned in the present case. Applying the principles indicated by this Court in E.C.I.L. case to the facts of the present case, we cannot conceive any prejudice, which is said to have been caused to the delinquent, and, therefore, non-supply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid premises, we set aside the impugned order passed by the learned single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed."*

14. *In the entire petition, the petitioner has not pointed out what prejudice has been caused to him on account of the non-furnishing of the enquiry report and, therefore, in view of the decision of the Supreme Court in Oriental Insurance Company Ltd. (supra), I hold that the non-supply of the enquiry report cannot vitiate the enquiry proceedings. ”\_*

In the case in hand also the complainant has failed to show what prejudice was caused to him. Hence there is no substance in that point.

21] However on the grounds mentioned earlier, it is seen that the enquiry conducted against the complainant was not fair and proper. The findings of enquiry officer are perverse. Subsequently,

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issue Nos.1 and 2 are answered in the affirmative. As the respondent has prayed to permit them to prove the misconduct before this Court in case the enquiry is held unfair and findings as perverse, it is necessary to permit the respondent to prove guilt of complainant before this Court by adducing evidence. Hence, following order is passed.

**ORDER**

- 1] It is hereby declared that the enquiry conducted against the complainant is unfair and findings of the enquiry officer are perverse. The enquiry is vitiated.
- 2] The respondent is permitted to prove the misconduct of the complainant by adducing evidence in the court.

Amravati.

Date : 15.12.2020 .

UWB/-

(M.M.Shaikh)

Judge,

Labour Court, Amravati.

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