

I/142790/2021

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Government of West Bengal
Labour Department, I. R. Branch

N.S. Buildings, 12th Floor

1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 1333/(LC-IR)/11L-125/13

Date : 03.08.2021

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 87-IR/11L-125/13 dated 11.02.14 the Industrial Dispute between M/s Astra Zeneca Pharma (India) Ltd., 234/3A, A.J.C. Bose Road, 1st Floor, F.M.C. Fortuna Building, Kolkata - 700020 and their workman Smt. Sarmistha Chatterjee, 123/8/2, Gopal Lal Tagore Road, Kolkata - 700035 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Second Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said Second Industrial Tribunal, Kolkata, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-

Deputy Secretary

to the Government of West Bengal

No. Labr/ 1333/1(5)/(LC-IR)

Date : 03.08.2021

Copy, with a copy of the Award, forwarded for information and necessary action to :

1. M/s Astra Zeneca Pharma (India) Ltd., 234/3A, A.J.C. Bose Road, 1st Floor, F.M.C. Fortuna Building, Kolkata - 700020.
2. Smt. Sarmistha Chatterjee, 123/8/2, Gopal Lal Tagore Road, Kolkata - 700035.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. Labr/ 1333/2/(LC-IR)

Deputy Secretary
Date : 03.08.2021

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, Kolkata with reference to his Memo No. 713 - L.T. dated 05.07.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001

Deputy Secretary

Animesh Raju
Pl. do the needful
instructing etc.
GR

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge
2nd Industrial Tribunal, Kolkata

Case No. VIII-05 of 2014

Under Section 10(2A) of The Industrial Disputes Act, 1947

Smt. Sarmistha Chatterjee

-Vs-

M/S. Astra Zeneca Pharma (India) Limited

Dated, 26.03.2021

J U D G E M E N T

This case has been referred to this Tribunal by the Labour Department, Govt. of West Bengal for adjudication and two issues have been framed by the Labour Department, Govt. of West Bengal. The issues framed are as follows:-

- 1] Whether the termination of service of Smt. Sarmistha Chatterjee w.e.f. 20.12.2012 by the management of M/S. Astra Zeneca Pharma (India) Limited is justified.
- 2] To what relief, if any, the workman is entitled?

Record shows that after reference both parties have appeared before this Tribunal and contested this case by filing respective written statements.

In her written statement, the petitioner has submitted that on 07.01.2002 she joined in the Office of the O.P. company as Professional Sales Representative and thereafter her service was confirmed by a letter dt. 22.01.2003 by the O.P. company and as she protested against the illegal practice of the O.P. company, she was transferred to Silchar in 2005 without any valid reason and due to her good work she achieved four V.P. awards from the company and thereafter she was transferred again to Kolkata.

The petitioner has further submitted in her written statement that due to legal protest against the illegal activities of the company she was given the territory which is about 80 kms. away from her home and for this reason she suffered from mental stress and on 02.11.2011 she had visited Chakdah and on 02.12.2011 she attended a meeting at the Zonal Office of the O.P. company and thereafter from 09.12.2011 to 14.12.2011 she was on leave and she had to make report on her visits within three days but due to her mental stress she could not submit her report and then in the first and second weeks of December, 2011 she prepared his report from her memory and in that report she had misreported her visit to Chakdah on 02.11.2011 as 02.12.2011 and she also made her expense statement under the above circumstances.

In her written statement, the petitioner has further submitted that on 15.02.2012 she received a letter from one, Suman Sengupta of the company and by that letter, explanation was sought for the irregularity regarding the daily call report for 02.12.2011 and she immediately replied to the letter by her letter dt. 20.02.2012 stating that it was an inadvertent and unintentional human error for which she prayed for unconditional apology but the company sent a show cause notice-cum-charge sheet dt. 28.03.2012 to her and she was given time of 48 hrs. to give reply of the letter and on that date even before the service of said show cause notice-cum-charge sheet on her and without being given chance to reply, she was issued another

letter to meet the H.R.D. of the company on 10.08.2012 for discussions and she replied to the said show cause notice-cum-chargesheet stating that it was an inadvertent and unintentional human error and then the company gave her one letter dt. 03.05.2012 stating that her explanation was not satisfactory and an enquiry had been proposed and the date and venue of enquiry would be communicated to her shortly but she was again directed to submit her explanation as to why disciplinary action should not be taken against her and then she replied to that letter stating again her stand and requested the company not to initiate any disciplinary action against her.

In her written statement the petitioner has further stated that then on 10.08.2012 for discussions she went to the Zonal Office of the company and she went to the room of Shri Sathyakumar Ravi and only one stenographer was present there and then said Ravi intimated her that one enquiry proceeding will be conducted in respect of the show cause notice-cum-chargesheet dt. 28.03.2012 and she became surprised and perplexed but she was directed to participate the said enquiry and she was not given any opportunity to defend herself and she was forced to sign on a paper and the said disciplinary proceeding was conducted by violating the principles of natural justice and then the company sent her a termination letter dt. 20.12.2012 and she immediately appealed to the company for consideration of the termination order but her prayer was rejected and thereafter she raised an industrial dispute before the Labour Department, Govt. of West Bengal and thereafter the O.P. company paid her Rs. 12,299/- and the company also paid her Rs. 1,51,541/- towards her gratuity and the conciliation proceedings failed and then this case has been referred to this Tribunal and the punishment is disproportionate to the charges against her. Hence, the petitioner has filed this case praying for an award for declaration that her termination was illegal and void, and she has also prayed for reinstatement in service will full back wages of other consequential benefits.

The O.P. company has contested this case by filing a written statement denying therein all the material allegations of the petitioner. The O.P. submits that the petitioner has been terminated from the service by holding an enquiry according to the principles of natural justice and according to the condition of the service she had to

submit daily call report and in her daily call report dt. 02.12.2011 she has stated that she worked at Chakdah on 02.12.2011 and met nine doctors and four chemists and the said report also mentioned that she attended the review meeting in the Zonal Office of the company at Kolkata and then the Regional Branch Manager issued a letter to her seeking her explanation for her false reports and then she informed by a letter that inadvertently she reported Chakdah on 02.12.2011 instead of review meeting and requested to consider the matter as an unintentional error on her part and then show cause was sent to her for her misconduct for submitting false report and then the enquiry was held on 10.08.2012 and she attended the said enquiry and she admitted that she made the mistake inadvertently and then her service was terminated on merit and the final settlement money and the amount of gratuity was sent to her after termination of her service and she accepted the said money and all the allegations of the petitioner are false. Hence, the O.P. company has prayed for dismissal of this case.

Record shows that thereafter both sides produced evidences on the point of validity of domestic enquiry and both sides examined one witness each and by order no. 80 dt. 28.01.2020 this Tribunal held that the said domestic enquiry held by the O.P. company is illegal and void ab initio, and declared invalid.

Record shows that the O.P. company has not challenged this order no. 80 dt. 28.01.2020 passed by this Tribunal before any higher forum and accordingly it means that this order dt. 28.01.2020 is correct, legal and valid and the domestic enquiry held by the company against the petitioner was illegal and void ab initio.

After disposal of the dispute on the validity of the domestic enquiry, the present case was fixed for evidence on merit and both sides have examined one witness each and proved some documents.

DECISION WITH REASONS

Now, it is to be considered legally as to whether the termination of service of the petitioner workman was justified.

The Ld. Lawyer for the O.P. company has cited the following decisions:-

[1] The Hon'ble Supreme Court has held in a case viz. SBI – Vs – Hemant Kumar as reported in 2011, LLR Page No.449 that reinstatement with full back wages to a bank employee should not have been granted by the Industrial Tribunal since he has been guilty of misappropriation and defalcation of money and besides that, he has admitted twice about the commission of misconduct.

[2] The Hon'ble Supreme Court has held in a case viz. Karnataka Power Transmission Corporation Limited – Vs – C. Nagaraju and Another as reported in 2020 LLR Page No. 238 that in a criminal trial strict proof of evidence is required while departmental is on the basis of preponderance of probabilities and standard of proof of guilty in a departmental enquiry is not strictly based on the rule of evidence as in criminal trial.

[3] The Hon'ble Supreme Court has held in a case viz., The Depot Manager APSRTC – Vs – N. Danaiah as reported in 2020 LLR Page No.119 that misappropriation of money of employer by workman is a grave and serious misconduct.

[4] The Hon'ble Madras High Court has held in a case viz., Management of Salem Steel Plant – Vs – Presiding Officer, Labour Court, Salem and Sri Vajavelu as reported in 2005 LLR Page No.263 that making false claim for medical reimbursement by a workman will amount to a serious misconduct to justify his dismissal from service since the employer will be subjected to financial loss and **when the workman has lost the confidence of the employer which has been duly pleaded and proved**, the Labour Court has erred in setting aside the dismissal of the workman.

The Ld. Lawyer for the petitioner has cited the following decisions:-

[1] The Hon'ble Supreme Court has held in a case viz., The K.C.P. Employees' Association, Madras –Vs- The Management of K.C.P. Limited, Madras & Others as reported in Indian Factories and Labour Reports, Volume 36, Page 218 , 1978(36) F.L.R. that in Industrial Law, interpreted and applied in the perspective of Part-IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour.

[2] The Hon'ble Supreme Court has held in a case viz., Deepali Gundu Surwase – Vs – Kranti Junior Adhyapak & Others as reported in Indian Factories and Labour Reports, 2013 (139) F.L.R., Page-541 that if action taken against the employee by the employer found to be ultra virus the relevant statutory provisions or principles of natural justice by competent judicial / quasi-judicial body or court and employee reinstated and restored to position he held before dismissal or removal or termination, implies that he will be put in the same position in which he would have been but for illegal action taken by the employer, reinstated employee is entitled to claim full back wages and if the employer denies back wages to employee, he has to specifically plead and prove that during intervening period employee was gainfully employed and was getting some emoluments.

[3] The Hon'ble Supreme Court has held in a case viz., The workman of Firestone Tyre & Rubber Company – Vs – the Management & Others as reported in Indian Factories and Labour Reports, 1973 Vol 26, Page -374 that – “we have exhaustively referred to the various decisions of this Court, as they give a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge.

From those decisions, the following principles broadly emerged:-

[1] The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute referred to a Tribunal, the latter has power to see if action of the employer is justified.

[2] Before imposing the punishment an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

[3] When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or malafide.

[4] Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

[5] The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

[6] The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

[7] It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

[8] An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee to enable the Tribunal itself to be satisfied about the alleged misconduct.

[9] Once the misconduct is proved, either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation”.

The above mentioned decisions of the Hon'ble Supreme Court and the Hon'ble High Court will be followed in this case during adjudication of dispute.

In this present case, the O.P. company has not pleaded in its written statement that the workman has lost the confidence of the employer.

Admittedly, the petitioner workman joined in the O.P. company on 07.01.2002 as Professional Sales Representative and her service was confirmed later on and then on 20.12.2012 she was terminated by the O.P. company on the ground of her submitting false report.

It is true that in the departmental proceeding, The Indian Evidence Act has not to be strictly followed during adjudication but on the vital material points this Act has to be followed strictly in order to give evidentiary value to the statements of the witnesses and the exhibited documents **particularly when in a case a workman has been dismissed from service.**

The principle of preponderance of probabilities has to be followed in a departmental proceeding or domestic enquiry at the time of giving evidentiary value to the statements of the witnesses and the exhibited documents. According to The Oxford English Dictionary, the word "Preponderance" means the state of being greater in number and the word "Probabilities" means the extent to which something is probable or a probable event. So to sum up, the expression "The principle of preponderance of probabilities" means the rule regarding application of greater number of probable events and accordingly in a domestic enquiry it is to be seen as to whether there are greater number of probable events in the statements of the witnesses and exhibited documents on record to prove the case against the employee concerned. But it is the settled law that the principles of natural justice has to be strictly followed in the departmental proceeding or enquiry and the criminal trial, and accordingly at first it is to be seen during adjudication of an industrial dispute as to whether the principle of natural justice has been strictly followed against the employee and then on the basis of preponderance of probabilities the evidentiary value of the statements of the witnesses and the exhibited documents have to be measured according to the Indian Evidence Act in order to arrive at a justified decision.



According to the Indian Evidence Act, proof of documents can be made by any person who knows the handwriting or the signature of the writer of the documents but in order to give evidentiary value to the said documents, the writer of the said documents has to be examined to get substantive evidence on record. Proof of document and evidentiary value of the contents of the said document are not the same and they are quite different and the executor of the said document has to be examined to prove the contents of the said documents as substantive evidence otherwise the contents of the said document cannot be given any legal value. Of course, if the writer or maker of the said document is dead or not found, the circumstance will be different and in that event, Section 32(2) of the Indian Evidence Act has to be applied but if he is alive, he must be examined to prove the said document.

The PW-I Sarmistha Chatterjee, the petitioner of this case, has stated about the incidents which have been mentioned by her in her written statement and she has submitted that the chargesheet, enquiry, findings of the enquiry, punishment imposed and the whole process are bad in law and even the punishment is disproportionate to the charges and she has proved some documents and in her crossexamination she has stated that she herself prepared her expense statement (Exbt.6) and she has also prepared the daily call report (Exbt.7) and in Exbt.7 she mentioned that she visited Chakdah and though it is written in the Exbt.4 as proceeding of enquiry, actually it is not so and at that time she was called for the purpose of discussion and she signed on the Exbt.14 and before putting her signature on Exbt.14 she did not raise any objection at any place and subsequently also she did not file any objection mentioning that the Exbt.14 was not an enquiry proceeding but it was a matter of discussion and in the Exbt.14 she has mentioned that it was done by mistake and she claimed expenses by mistake and she encashed Rs. 1,51,541/- and Rs. 12,299/- from the O.P. company after termination of her service.

In this case, the OPW-I Sathya Kumar Ravi, who is the Director of Human Resource in the O.P. company, has stated before this Tribunal that one Shri Suman Sengupta has executed the complaint against the workman and he has proved the xerox copy of this complaint written by the said Shri Suman Sengupta as Exbt-5 on admission but the O.P. company has not examined the said Shri Suman Sengupta as the witness in this

case though he is not dead now and this Exbt-5, that is the complaint, is the most vital document of this case because it is concerned with the allegation against the petitioner and it is the starting point of the case against the petitioner.

It is true that the OPW-I and said Shri Suman Sengupta belong to the same O.P. company and the OPW-I has proved the said complaint as Exbt-5 but as the O.P. company has not examined Shri Suman Sengupta as witness in this case, there is no substantive evidence on record in respect of the contents of the Exbt-5 and accordingly the said complaint cannot be given any legal value and it is the most vital document of the O.P. company and the O.P. company should have examined the said Shri Suman Sengupta to prove the contents of this complaint against the petitioner but that has not been done.

It is the allegation of the O.P. company that on 02.12.2011 the petitioner submitted one false report regarding her work before the company and for this reason Shri Suman Sengupta has sent this complaint to the petitioner on 15.02.2012 and as this complaint is the vital document, the O.P. company should have examined the said Shri Suman Sengupta to prove this Exbt-5 legally. So, non-proof of this Exbt-5 according to The Indian Evidence Act is a vital defect of the case of the O.P. company.

According to the allegation of the O.P. company, on 02.12.2011 the petitioner submitted one daily call report and one expense statement before the O.P. company and in that daily call report the petitioner mentioned that she went to Chakdah and visited some doctors and some pharmacists, and then she submitted one expense statement for visiting.

On the other hand, the Exbt-5, the complaint which has been sent to the petitioner by the said Shri Suman Sengupta after a long period from 02.12.2011, mentions only about daily call report, not about the expense statement and accordingly, it is held that this complaint is related to the daily call report, not to the expense statement.

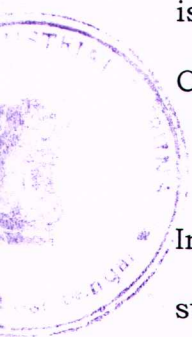


So, it is proved that the complaint was sent to the petitioner in respect of the daily call report only and there was no complaint in respect of the expense statement submitted by the petitioner before the O.P. company.

This complaint also mentions that the petitioner had worked at Chakdah on 02.12.2011 while on the same day she attended one review meeting along with others at the Zonal Office of the O.P. company and for this reason the said Shri Suman Sengupta directed the petitioner to give explanation regarding her false reporting but the complaint does not mention **specifically** which one was false – visiting Chakdah on 02.12.2011 or attending review meeting in the O.P. company on 02.12.2011.

According to the admission of the petitioner and the O.P. company, on 02.12.2011, the petitioner attended one review meeting in the Zonal Office of the O.P. company and on that date she did not visit Chakdah but the complaint does not specifically mention as to whether visiting Chakdah on 02.12.2011 by the petitioner was false reporting by her.

So, the complaint, the vital document on material point issued by the O.P. company, is confusing regarding identification of false reporting between two places of visit – Chakdah or Zonal Office of the O.P. company.



In this case, it is allegation of the O.P. company that on 02.12.2011 the petitioner submitted one false daily call report stating that she visited Chakdah in order to meet some doctors and pharmacists and then submitted one false daily allowance bill. So, this allegation of the O.P. company against the petitioner is of **criminal nature** and on the basis of this allegation the O.P. company held one domestic enquiry and subsequently the petitioner was terminated from her service.

Accordingly, the oral statements of the witnesses and the documents have to be scrutinised **strictly** according to The Indian Evidence Act to see whether the O.P. company has been able to prove the said allegation against the petitioner to the full extent.

It is true that in her letters dt. 20.02.2012, 02.04.2012, 05.05.2012, 20.08.2012 & 29.11.2012 the petitioner has admitted that she made the said mistake inadvertently without any bad intention.

Now, the question is whether that admission of mistake by the petitioner about the said false report and expense statement prepared by her can be legally regarded as proof of guilt against her.

In his crossexamination, the OPW-I has admitted that the O.P. company has got service rules for different classes of employees and for sales promotion employees the company follows SPE Service Rules which are guided by the SPE Act and the petitioner was governed by the Sales Promotion Employees Service Rules. So, certainly, there is Sales Promotion Employees Service Rules in the custody of the O.P. company and in this case the O.P. company has terminated the service of the petitioner on the ground of her submitting false report before the O.P. company. But the O.P. company has not produced the said Sales Promotion employees Service Rules in this case to show that if any workman submits **any false report** before the O.P. company, he or she may be terminated from his or her service. The termination letter dt. 20.12.2012 issued by the O.P. company to the petitioner also does not mention **specifically** that for submitting false report she has been terminated from service and this termination letter also does not mention the specific provision or rules or any standing order or any model standing order of the company by which she has been terminated.

For terminating any workman for submitting false report there must be rules or any standing order, model standing order in the O.P. company but no such rules or standing order or Sales Promotion Employees Service Rules according to the statement of the OPW-I has been produced and proved by the O.P. company to show that according to the said provision the petitioner has been terminated for submitting false report before the O.P. company. So, it is clear that the O.P. company does not know under what provision the petitioner has been terminated for submitting false report. Accordingly, admission by the petitioner about her submitting false report before the

O.P. company by inadvertent or unintentional mistake or without intention will not amount to proof of guilt by the petitioner for submitting false report because there is no such provision or rules in the O.P. company to terminate any workman if he or she submits any false report before the O.P. company and the O.P. company has also not produced any rules to show that such type of submission of false report by any workman amounts to misconduct.

The Exbt. 2, 3 & 4 issued by the O.P. company to the petitioner do not mention that for submitting false report her service may be terminated. Only the Exbt.4 mentions that the company may terminate her service by giving one month's notice or salary in lieu thereof but it does not mention any ground of termination for misconduct or submitting false report.

The termination letter dt. 20.12.2012 [Exbt-19] mentions that as per page-2, para 10 of the letter of confirmation of the petitioner, vide reference HR; SKR; 2010 dt. 27.04.2010 the company has decided to terminate her service but the O.P. company has not produced any such reference dt. 27.04.2010 in this case. On the contrary, the Exbt-4, the letter of confirmation dt. 22.01.2003 issued by the O.P. company shows that by this letter the service of the petitioner was confirmed by the O.P. company and this letter does not mention any penal clause for terminating the service of the petitioner on the ground of submitting false report.

So, submission of false report by the workman is not punishable and it is not a misconduct because the O.P. company has not produced any rules or provisions in this respect and for this reason admission of submitting such false report by the petitioner cannot be taken as proof of her guilt and such admission of the petitioner would have been legal if the O.P. company could have produced any specific provisions or rules to show that the petitioner has committed offence by submitting the false report according to the said rules of the O.P. company. So, the O.P. company cannot take any advantage in this case by saying that the petitioner has admitted the offence by saying that she did the said mistake inadvertently and without any intention.

The Exbt.9 is the show cause notice-cum-chargesheet issued by the OPW-I to the petitioner and this chargesheet mentions about submitting false expense claims by the petitioner. So there is difference between the complaint (Exbt.5) and the chargesheet (Exbt.9) on the point that the Exbt.5 does not mention anything about any false expense claim while the Exbt.9 mentions it. According to law, the chargesheet must be according to the allegations mentioned in the complaint issued to the petitioner. So this is a vital contradiction on a major point and the petitioner is entitled to get benefit of it.

This Exbt.9 mentions two charges framed against the petitioner and the said charges are as follows according to the said Exbt.9:-

- 1] Submitting false report of calls made to doctors, chemists and hospitals and / or submitting false expenses claims or other reports relating to the work of business of the company with a dishonest intention while carrying out company's business.
- 2] Any act subversive of discipline while carrying on the company's business and the activities of the company in the field.

In this case the allegation of the O.P. company is concerned with submission of false daily call report and false expense claims by the petitioner but on perusing the two charges framed I find with utmost surprise that in the first charge after expense claims, it is mentioned that – “or other reports relating to the work of business of the company with a dishonest intention while carrying out company's business” and in the second charge it is mentioned that “Any act subversive of discipline while carrying on the company's business and the activities of the company in the field”.

In this case the allegation of the O.P. company is not concerned with the above – “or other reports relating to the work of business of the company with a dishonest intention while carrying out company's business” as per the first charge and “Any act subversive of discipline while carrying on the company's business and the activities of the company in the field” as per the second charge.

Such type of act of the OPW-I is ridiculous as well as pathetic. Was it a luxury and childish game for the OPW-I ? Was the service life of the petitioner the personal property of the OPW-I ? Was there any discipline or rule of law in the **famous** O.P. company ? The OPW-I should be prosecuted departmentally by the O.P. company for such type of his illegal act. According to the settled law, if charge is wrong and illegal in a departmental or domestic proceeding and criminal trial, the said false and illegal charge itself brings a decent burial of the case of the O.P. company, and holding enquiry proceeding on the basis of such type of illegal charge becomes purposeless, illegal and unjustified. The principle of preponderance of probabilities cannot save such type of illegal charge. On the other hand, The Indian Evidence Act alone will destroy this charge and the enquiry proceeding completely.

According to the said Exbt.9, the above allegations amount to grave and serious misconduct under the service rule of the company which are applicable to the petitioner. But I have already discussed above that the O.P. company has not produced and proved any service rules of the company applicable to the petitioner to show that submission false report of visit and false expense statement amount to grave and serious misconduct. So, it is clear that without any rules or orders of the O.P. company, the said submission of false reports by the petitioner have been treated as misconduct on her behalf.

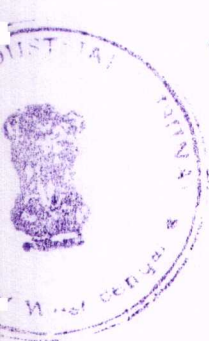
According to the settled law, the charge should be specific in respect of the time, date and place of the incident and it has to be read over and explained to the offender for his or her information and knowledge about the contents of the said charge to defend himself or herself during enquiry otherwise the charge framed would be considered as illegal and vague.

On perusing the said two charges (Exbt.9) I find that there is no mention of date, time and place of the incident and the incident has not been mentioned in short. Hence, I hold that the charges framed on 28.03.2012 against the petitioner are not legally correct. It may be that the petitioner knows about the date, time and place of the incident but law requires that in the charge, the date, time and place of the incident and the incident in short have to be mentioned specifically in order to give information

to the offender about the contents of charge he has to face during enquiry or trial but that has not been done and accordingly the said two charges framed on 28.03.2012 are not legally valid.

By a letter dt. 03.05.2012 (Exbt.12) the OPW-I informed the petitioner that her reply dt. 02.04.2012 was not satisfactory and departmental enquiry will be held against her and asked her to explain as to why a disciplinary action will be taken against her and then on 05.05.2012 the petitioner by her letter (Exbt.13) has stated that she reiterated her earlier explanation and requested not to initiate any disciplinary action against her.

The OPW-I by his letter dt. 28.03.2012 (Exbt.10) asked the petitioner to meet him in the zonal office of the O.P. company on 10.08.2012 for **"discussions"** and this letter does not mention **any other purpose** for meeting him but on perusing the Exbt.14, I find that on 10.08.2012 the petitioner went to the office of the O.P. company and met the OPW-I but the enquiry proceeding was started against her on 10.08.2012. So, according to the Exbt.10, the OPW-I asked the petitioner to meet him in the zonal office of the O.P. company on 10.08.2012 for discussion but on that date he started enquiry proceeding against her without any prior information and knowledge of the petitioner and this conduct of the OPW-I is highly pre-judicial and it also proves that before the said enquiry proceeding the petitioner was not given any sufficient opportunity to defend herself in this case.



On perusing the Exbt.14, I find that it is about the proceeding of the enquiry held on 10.08.2012 in the office of the O.P. company at Kolkata in between 11.30 a.m. and 13.00 p.m. and the petitioner was present and the OPW-I as the representative of the management was present and one Aditi Duggal of the O.P. company was present as the recorder of the proceeding.

It is the settled law that in an enquiry proceeding, there would be witnesses from the side of the company and there will be one enquiry officer in whose presence the said enquiry will be held and the witnesses will dispose on behalf of the company in respect of the allegation against the employee and after completion of the evidences of the

witnesses of the company, the employee will be given opportunity to adduce his/her evidence. But curiously enough this Exb.14 mentions the said OPW-I as the enquiry officer and he also asked some questions to the petitioner and there was no other witness on behalf of the O.P. company, and the enquiry proceeding was completed on that day.

Now, on perusing this Exbt.14, I find that in a most surprising manner the said OPW-I as the enquiry officer asked some questions to the petitioner and the petitioner replied the same. This Exbt.14 does not mention that the OPW-I has stated about the entire allegations against the petitioner as the witness and the petitioner was allowed to crossexamine him. So, the vital procedure in respect of the examination of witnesses of the company has not been followed. On the contrary, it is like an interview between two persons or question-answer session between two persons, which we often see in the **television** now and such type of question-answer session is unknown to the procedure of the enquiry proceeding.

So, from the Exbt.14 it is proved that the OPW-I has acted both as an enquiry officer and as an interviewer in an enquiry proceeding. Moreover, the OPW-I called the petitioner for discussions on 10.08.2012 in the office of the company but on that date **suddenly** started enquiry proceeding without any prior knowledge of the petitioner.

By a letter dt. 14.11.2012 (Exbt.16) the Vice President of the O.P. company sent the findings of the enquiry proceeding to the petitioner and asked him to explain in writing as to why a severe disciplinary action should not be taken against her.

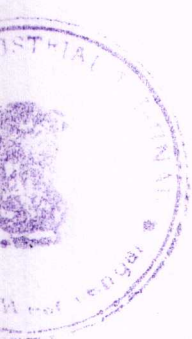
On perusing the findings of the enquiry dt. 10.08.2012 (Exbt.17) I find that the OPW-I as the enquiry officer submitted those findings of the enquiry.

One most important point to note is that Shri Suman Sengupta, who issued the complaint (Exbt.5) to the petitioner, has not been examined as witness in the enquiry proceeding and he is the most vital witness because he issued the said complaint and

there is no explanation from the side of the O.P. company as to why said Shri Suman Sengupta was not examined in the enquiry proceeding as witness.

In his crossexamination before this Tribunal the OPW-I has admitted that at the time of the alleged incident in 2012 he was not present and posted in the office of the company at Kolkata. So, it is clear that he has no personal knowledge about the incident of this case but he submitted the chargesheet against the petitioner, held the enquiry proceeding as the enquiry officer and he did not examine the complainant Suman Sengupta in the enquiry proceeding. On the contrary, he himself asked some questions to the petitioner during enquiry proceeding and then he himself submitted findings of the enquiry proceeding as the enquiry officer.

In the findings of the enquiry (Exbt.17) the OPW-I has mentioned that during the enquiry proceeding the petitioner stated that she claimed the expenses on 02.12.2011 by mistake and she has mentioned in her letter dt. 02.04.2012 that she had nothing to explain other than accepting this as a clerical error. But the enquiry proceeding (Exbt.14) written by the said OPW-I does not mention the above specific statements of the petitioner as reported by the OPW-I in the findings of the enquiry (Exbt.17). So, it is clear that in the findings of the enquiry (Exbt.17) the OPW-I has falsely mentioned the above statements of the petitioner by saying that she had stated the same before the enquiry proceeding.



In Exbt.17, the OPW-I has mentioned that "copy of the DCR was produced to the petitioner to get clarification that how can a detailed DCR could be prepared when she has not done the field work on 02.12.2012 i.e. review date. The petitioner reiterated that it is clerical error and requested the management to condone the mistake" but the Exbt.14 prepared by the OPW-I does not mention the above statements of the OPW-I in Exbt.17.

In Exbt.17, the OPW-I has mentioned that "The evidence produced by the management during enquiry proceeding was not disputed by the petitioner and she has failed to give any explanation nor crossexamined the witnesses during the enquiry and from the above evidence it has established that the petitioner has reported field

work on the day of attending the review meeting held on 02.12.2011", but the Exbt.14 prepared by the OPW-I does not mention that opportunity was given to the petitioner to cross examine the witnesses and she refused to crossexamine the witnesses during the enquiry. Actually, the OPW-I does not know what is the legal definition of the words "evidence" and "witnesses" mentioned by him in the Exbt.17 because he did not examine any witness and he himself asked some questions to the petitioner during the enquiry proceeding by adopting a peculiar and unknown procedure but his said action cannot be held that he assumed the character of witness during the enquiry proceeding. A witness cannot ask any question to the employee; on the contrary, the witness will state his case on behalf of the company and then he will or may be crossexamined by the employee. Of course, during the enquiry proceeding the enquiry officer suomoto may ask any question to the witness or the employee to clear any doubt about any circumstance but by no stretch of imagination an enquiry officer cannot be called a witness to the proceeding or trial.

So, the report (Exbt.17) made by the OPW-I as the findings of enquiry to hold that the charges have been proved against the petitioner by the O.P. company are totally baseless, confusing, illegal, false, imaginary, invalid and void ab initio.

The Exbt.19 is the termination letter dt. 20.12.2012 issued by one Smita Saha, the Vice President of the O.P. company, to the petitioner and this termination letter mentions that the service of the petitioner has been terminated with immediate effect but this termination letter does not mention specifically that for submitting false report, her service has been terminated and this termination letter also does not mention under what provision or rule or standing order of the O.P. company the service of the petitioner has been terminated for submitting false report.

On the contrary, the termination letter mentions that as per page-2, para-10 of the letter of confirmation of the petitioner reference H.R.; SKR; 2010 dt. 27.04.2010 the company has decided to terminate her service by paying her one month's notice pay. This reference is also incorrect because according to the Exbt.4, the company by one letter of confirmation dt. 22.01.2003, has confirmed the service of the petitioner and the O.P. company has not produced any such letter of confirmation dt. 27.04.2010 in

this case. In order to give sufficient information to the employee concerned regarding her termination, the termination letter must mention the offence for which the service of the employee is terminated and the specific provision or rule or standing order of the company wherein the said offence has been made punishable. But, this Exbt.19 does not mention the above vital matters. So this Exbt.19 is not legally correct.

So, considering the entire materials on record, I find that the complainant Suman Sengupta has not been examined in this case before this Tribunal and he has also not been examined in the enquiry proceeding against the petitioner and the complaint (Exbt.5) does not mention anything about the expense statement and the two charges framed in this case by the OPW-I are vague having no legal value and the OPW-I called the petitioner on 10.08.2012 in the office of the company for discussions but on that date he held enquiry proceeding in the said office without any prior knowledge of the petitioner and according to the Indian Evidence Act, no witness on behalf of the company has been examined during the enquiry proceeding and during enquiry proceeding the OPW-I adopted a peculiar procedure like interview and the enquiry proceeding does not mention that the petitioner refused to crossexamine any witness and on the same day the enquiry proceeding was completed and the Exbt.17, the report of findings of enquiry prepared by the OPW-I has no legal value as it mentions false matters which are not supported by the Exbt.14 as discussed above and the opinion of the OPW-I to the point that charges have been proved against the petitioner is not correct according to law and the termination letter (Exbt.19) is not legally correct.

In this case the petitioner has claimed that the punishment given by the O.P. company to her is disproportionate to the charges. But on perusing the entire materials on record I hold that there is no legal question to decide whether the said punishment is disproportionate or proportionate because the O.P. company has not followed the principles of natural justice and the Indian Evidence Act to give the disputed punishment to the petitioner by way of termination and as the said punishment itself is illegal, there is no necessity to decide whether it is disproportionate or proportionate.

In view of the above discussions on the basis of the evidences of the OPW-I and exhibited documents of the O.P. company, I hold that the O.P. company has not followed the principles of natural justice at the time of holding domestic enquiry and the OPW-I thought himself above of the laws of the land for which he acted as the maker of charges against the petitioner, enquiry officer and interviewer at the time of enquiry proceeding and adjudicator of the fate of the enquiry proceeding as the enquiry officer and the OPW-I did not follow the principles of natural justice at all. On the contrary, he followed a peculiar and unknown procedure according to his whims which should be termed as **the principles of unnatural justice** and we should take note of how the OPW-I, being the Director of Human Resources in the O.P. company, whimsically followed illegality and biased view at the time of holding disciplinary proceeding against the petitioner from the very beginning of the proceeding and his actions should be condemned.

I have already discussed above that admission of matter, which is not codified as illegal by the O.P. company, by the petitioner cannot be used against her legally to hold her guilty for submitting false report because the O.P. company has not produced any rules or standing orders to show that submission of false report by an employee amounts to grave misconduct for which the said employee may be terminated or dismissed from service.

The principle of preponderance of probabilities has been applied in this case during examination of witnesses and proof of documents of the PW-I and the OPW-I because the xerox copies of the vital documents have been exhibited without production of the originals according to The Indian Evidence Act.

The rules of The Indian Evidence Act have been applied **strictly** in this case to consider legal value of the mandatory provisions of this Act on the law points and **strict** compliance of the principle of natural justice has been followed in this case because the service of the petitioner has been terminated by O.P. company.

So, considering the entire materials on record as discussed above and in view of the above mentioned decisions of the Hon'ble Supreme Court and the Hon'ble High Court,

I hold that the order of termination dt. 20.12.2012 passed by the O.P. company in respect of service of the petitioner is illegal and void ab initio and she has been illegally terminated due to whimsical attitude of the OPW-I and accordingly, I hold that she is entitled to be reinstated in service with full back wages from 20.12.2012 along with consequential benefits, interest and costs.

In this case the O.P. company has not produced and proved any evidence to show that since after termination on 20.12.2012 the petitioner used to work in any service place and earn salary.

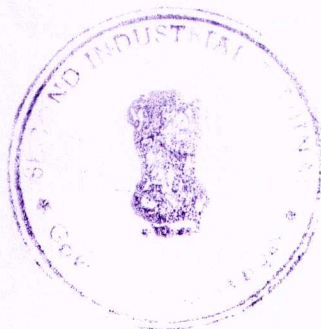
Due to such illegal termination w.e.f. 20.12.2012 the petitioner has been suffering mentally and financially till now and for such type of unwanted sufferings caused by the O.P. company, she is entitled to get cost as compensation from the O.P. company in this case.

Admittedly the petitioner has received Rs. 12,299/- and Rs. 1,51,541/- from the O.P. company after termination of her service. So the O.P. company is directed to adjust the said amount at the time of calculation of the entire arrear amount of full back wages of the petitioner from 20.12.2012 till her reinstatement.

Out of the above mentioned money, admittedly the petitioner has received Rs. 1,51,541/- from the O.P. company after termination of her service as her **gratuity amount**. But as the petitioner has to be reinstated, she is directed to return Rs. 1,51,541/- to the O.P. company by a cheque within four months of her reinstatement.

So considering the entire materials on record I hold the case is maintainable in its present form and law and the petitioner has cause of action to file this case and she is entitled to get relief as prayed for.

In the result, the case succeeds.



Hence, it is

ORDERED

that the case no. VIII-05 of 2014 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed on contest against the O.P. company with cost of Rs. 50,000/-.

It is hereby declared that the order of termination dt. 20.12.2012 passed against the petitioner by the O.P. company is illegal and void ab initio.

It is also declared that the petitioner is entitled to be reinstated in her previous service and status as on 20.12.2012 with full back wages and the O.P. company is directed to pay the full back wages to the petitioner from 20.12.2012 till her reinstatement with a compound interest of 10% p.a. on the entire arrear amount of back wages and the O.P. company is directed to pay this entire arrear amount to the petitioner within 30 days from this date of order.

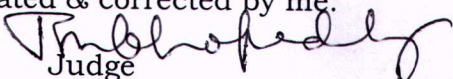
The O.P. company is directed to reinstate the petitioner **on 01.04.2021** in her previous job with the same status as on 20.12.2012, in default, the petitioner is at liberty to take legal action against the O.P. company.


Let this judgement and order be treated as an award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case free of cost forthwith for information.

The case is disposed of today.

Dictated & corrected by me.


Judge


(Partha Sarathi Mukhopadhyay)
Judge
2nd Industrial Tribunal