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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 02.06.2022***
Pronounced on: 14 .07.2022

\+ **W.P (C) No.6379 OF 2004**

ARMY WELFARE HOUSING ORGANISATION .... Petitioner

Through Mr. A. K. Tewari, Adv.

versus

PRESIDING OFFICER & ORS**.** .... Respondents

Through Mr. Pankaj Sharma, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G E M E N T

GAURANG KANTH, J.

1. The present Writ Petition arises from the award dated 09.06.2003 passed by Sh.K.S Mohi, Ld. Presiding Officer, Labour Court-X, Karkardooma Court in ID No. 1636/95 (Old No. 429/92)("**impugned award**"). Vide the impugned award, the Learned Industrial Tribunal was pleased to hold that the alleged misconduct of Respondent No.2 was required to be dealt as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965 of the Government of India (**"Central Service Rules"**). The impugned award further held that the Petitioner failed to follow the Central Service Rules while conducting the enquiry and terminating the services of the Respondent No.2. The Learned Industrial Tribunal accordingly

directed reinstatement with full back wages and continuity in service to the workman -Respondent No.2.

Facts

2. The Respondent No. 2 was working as Accounts clerk in the Finance & Accounts section of the Petitioner organisation on a *'fixed term temporary employment'* with effect from 13.09.1983. The initial appointment of the Respondent No.2 was for a period of one year with a probation period of 3 months.

3. The services of the Respondent No.2 with the Petitioner were extended from time to time till September 1987.

4. The Petitioner Management has formulated the Army Welfare Housing Organisation Terms & Conditions of Service Rules (Civilians), 1987 dated 20.10.1987 ("**TCS Rules**"). The TCS Rules were made applicable to the civilian employees of the Petitioner with effect from 01.07.1987 and the Petitioner issued appointment letter dated 10.10.1987 to the Respondent No.2 under the TCS Rules. The Respondent No.2, vide letter dated 02.11.1987, opted to be governed by the TCS Rules. As per the appointment letter, the appointment of Respondent No.2 was for a period of 3 years. Clause 13 of the said appointment letter, *inter alia*, reads as follows:

> *"You will be governed by the Code of Conduct mentioned in the Rules as well as the disciplinary rules as are applicable to the Central Government Employees. The conditions as laid down in the various orders of the AWHO will be applicable."*

5. The services of Respondent No.2 was further extended vide the Novation of Contract letter dated 25.09.1990 and its acceptance letter dated 09.10.1990 till 30.09.1993. Clause 14 of the said Novation of Contract letter dated 25.09.1990 (which is part of Trial Court Record) was also identical to that of Clause 13 of the Appointment Letter dated 10.10.1987.

6. During the subsistence of the service tenure of the Respondent No.2, the Petitioner conducted a departmental examination for promotion on 16.10.1990. Seven candidates including the Respondent No.2 opted for the said departmental examination. Two officers were deputed as invigilators on duty for supervision of the said examination, which was conducted at the premises of the Petitioner. During the course of examination, it was observed by invigilator of the management that a paper ball containing some answers was found near the table of the Respondent No. 2 which was taken into possession by one of the invigilators and on the basis of the same, a show cause notice dated 23.10.1990 was issued to the Respondent No. 2. The Respondent No. 2 replied to the show cause Notice on 24.10.1990 refuting the charges in the show cause notice. The Petitioner issued another show cause letter dated 13.11.1990 to which Respondent no.2 replied on 21.11.1990 denying all the charges against her.

7. A departmental enquiry was held by the petitioner against Respondent No. 2 and an enquiry officer was appointed to conduct a domestic enquiry. The management issued a letter

dated 15.04.1991 to Respondent No. 2 holding her guilty of misconduct. Respondent no. 2 on 29.04.1991 submitted a reply to the letter dated 15.04.1991 denying all the allegations. However, the petitioner did not approve her stand and relieved Respondent No. 2 from the contractual employment w.e.f. 18.06.1991 as per the terms, conditions and service rules of the petitioner.

8. Based on the challenge of Respondent No.2 against the termination, the appropriate Government, made a reference for adjudication under Section 10(1)(a) and 12(5) of the Industrial Disputes Act vide order No.F.24(359l)/92-Lab dated 16.10.1992 with the following terms of reference:

> *"Whether the services of Smt Neena Jain have been terminated illegally and/or unjustifiably by the management and is so to what relief is she entitled and what directions are necessary in this respect?"*

9. The Respondent No.2 filed her statement of claim before the Learned Industrial Tribunal alleging that the domestic enquiry conducted by the Petitioner did not adhere to the principles of natural justice and did not follow the due process of law, therefore, the termination of the Respondent No.2 based on the said domestic enquiry was illegal. The Petitioner Management in its reply refuted the allegations levelled by the Respondent No.2 against the Petitioner. It is the case of the Petitioner that they conducted a fair and proper domestic enquiry in accordance with the due process of law and in compliance with

the principles of natural justice. The Petitioner claimed that the allegations raised against the Respondent No.2 were proved in accordance with law during the domestic enquiry conducted by the Petitioner and the services of the Respondent No.2 were terminated based on the said enquiry report. The Petitioner thus, prayed for dismissal of the statement of claim filed by the Respondent No.2 before the Learned Industrial Tribunal.

10. Based on the pleadings of the parties, the Learned Tribunal framed the following issues:

> *(i) Whether the enquiry conducted by the Management is illegal, unfair and against the principles of natural justice?*
>
> *(ii) As per terms of reference.*

11. Both the parties led their respective evidence before the Ld. Industrial Tribunal. The Petitioner examined two witnesses to prove their case, while the RespondentNo.2 examined herself to substantiate her case. Vide Award dated 09.10.1998, the Ld. Tribunal concluded that the services of the Respondent No.2 were governed by the Central Service Rules. Learned Tribunal held the termination of services of the Respondent No.2 to be illegal since the Petitioner failed to prove that the enquiry conformed to the Central Service Rules and accordingly directed for reinstatement of the Respondent No.2 with 50% back wages and continuity of service.

12. Thereafter, the Petitioner challenged the award dated 09.10.1998 before this Court in W.P(C) No. 3048/1999. This

Court, vide order dated 21.10.2008, remanded the matter back to the Industrial Tribunal, *inter alia*, with the following observations:

> *"The Petitioner has challenged an Award dated 9th October, 1998 passed by the learned Labour Court in ID No.1636/95.*
>
> *A perusal of paragraph 9 of the Award indicates that the learned Labour Court has proceeded on the "admitted" basis that the Respondent/Workman is governed by the Central Civil Service (Classification, Control & Appeal) Rules.*
>
> *Learned counsel for the Petitioner says that there is no such admission. In fact, it is the case of learned counsel for the Petitioner that what is applicable to the Respondent/Workman are the terms and conditions contained in the AWHO Terms and Conditions of Service Rules (Civilians), 1987 dated 20th October, 1987.*
>
> *Learned counsel for the Respondent/workman accepts the fact that there is no admission on record that the services of the Respondent/Workman are governed by the Central Civil Service (Classification, Control & Appeal) Rules.*
>
> *In this view of the matter, it is quite clear that the learned Labour Court proceeded on an erroneous basis. The matter, will, therefore have to be reconsidered by the Learned Labour Court on the basis of the rules which are applicable to the Respondent/Workman. Consequently, there is no option but to set aside the impugned Award dated 9th October, 1998. It is ordered accordingly.*
>
> *The dispute will be reconsidered afresh by the learned Labour Court.*

The parties will appear before the learned Labour Court on 12th November,2002.

The learned Labour Court should endeavour to dispose of the matter early say within six months and in any case before 30th June, 2003.

The Respondent/workman will be at liberty to move an application for grant of interim wages before the learned Labour Court.

The writ petition stands disposed of……..”

13. After the matter was remanded back by this Court, the Learned Industrial Tribunal again afforded opportunity to both the parties to lead their respective evidence. The Petitioner Management lead additional evidence by examining MW-1 and placed on record the TCS Rules. Respondent No.2, however, chose not to lead any additional evidence.

14. The Learned Tribunal, vide the impugned award, held that the alleged conduct of indiscipline by Respondent No.2 of using unfair means during the course of examination ought to have been dealt by the Petitioner Management in accordance with the Central Service Rules. Learned Tribunal further held the termination of the Respondent No.2 to be illegal, unjustifiable and unlawful since the Petitioner Management failed to comply with the Central Service Rules while holding the domestic enquiry against Respondent No.2. Learned Tribunal accordingly directed the Petitioner to reinstate the Respondent No.2 with full back wages and continuity in service.

15. The Petitioner Management is now before this Court in the present Writ Petition challenging the impugned award.

Submissions made on behalf of the Petitioner

16. The Petitioner claims to be a society registered with the Registrar of Societies, Delhi under the Societies Registration Act, 1860 with an object to provide dwelling units to the serving and retired army personnel as well as their widows, all over India, on "no profit and no loss basis". In order to achieve its afore-stated object, the Petitioner, engages employees on contractual basis as required from time to time. It is also the case of the Petitioner that it has not received any grants from the Central Government for managing their affairs or for the purposes of undertaking its objects.

17. Learned Counsel for the Petitioner further submits that the employees of the Petitioner, including Respondent No. 2 are governed by TCS Rules and not by Central Service Rules. The Petitioner is not a Central Government Organisation or an instrumentality of the State under Article 12 of the Constitution of India. Hence, it is not mandatory for the Petitioner to follow the Central Service Rules while operating the establishment as has been erroneously held in the impugned award. The Petitioner relies upon the following judicial pronouncements *to* substantiate that the Petitioner is not a State under Article 12 of the Constitution of India:

(i) LPA No.867/2013 (Army Welfare Housing Organisation Vs Adjutant General's Branch &Ors) by this Court,

(ii)Judgement dated 09.04.2019 passed by the High Court of Telangana (Single Judge) in W.P (C) No. 95/2019 and

(iii) Judgment dated 17.09.2019 passed by the Division Bench of the Telangana High Court in Writ Appeal No. 541/2019.

18. Learned Counsel for the Petitioner further submits that the domestic enquiry was held in a proper and legal manner after complying with the principles of natural justice. Lt. Col. P.C. Shah (Enquiry Officer) had granted Respondent No. 2 enough opportunity to cross-examine all the witnesses of the Petitioner-management. Respondent No.2, during the enquiry proceedings, never requested the enquiry officer to allow her to take the help of a Defence Assistant.

19. It is further submitted by learned counsel for the Petitioner that learned Industrial Tribunal ignored the vital fact that the service of Respondent No.2 was *'fixed tenure temporary employment'* and was to expire on 30.09.1993. Respondent No.2 never challenged her fixed term employment contract with the Petitioner, therefore, Respondent No.2 is not entitled for any relief beyond the expiry of the said fixed term contract i.e., 30.09.1993. According to the Petitioner, learned Tribunal has erred in reinstating Respondent No.2 with full back wages and continuity in service. The Petitioner has relied upon ***Madhya Pradesh Administration Vs Tribhuban*** reported as ***2007 (9) SCC 748*** *and* ***Ghaziabad Development Authority &Anr Vs Ashok Kumar & Anr.*** *reported as* ***2008 (4) SCC 261***.

20. It has been submitted by the counsel for the Petitioner that in compliance of the order dated 30.11.2005 passed by this Court, the Petitioner had already paid Rs.17,51,645/- to Respondent No.2 (between 15.07.2004 till October 2019) which is beyond her entitlement and no further claim remains.

21. Relying upon ***Kishore Chandra Samal Vs Orissa State Cashew Development Corporation Ltd, Dhenkanal 2006 (1) SCC 253; Hombe Gowda Educational Trust &Anr Vs State of Karnataka & Ors 2006 (1) SCC 430;U.P State Brassware Corporation Ltd &Anr Vs Uday Narain Pandey 2006(1) SCC 479; Karnataka Bank Ltd Vs A.L Mohan Rao 2006 (1) SCC 63*** *and* ***Ramesh Chandra Sharma Vs Punjab National Bank &Anr. 2007 (9) SCC 15***, counsel for the Petitioner argued that the scope of judicial review is limited in the matters of disciplinary proceedings and the Courts should not interfere with the decision of the Disciplinary Authority.

22. With these submissions, the Counsel for the Petitioner prays for setting aside the impugned award.

Submissions made on behalf of the Respondent No.2

23. Learned counsel for Respondent No.2 submitted that the present writ petition seeks to reappraise the evidence recorded by the learned Industrial Tribunal. It has further been argued that the Petitioner terminated the services of Respondent No.2 as a part of their pre-determined and pre-conceived plan. Even before holding the domestic enquiry, the Petitioner was clear about the punishment to be inflicted upon Respondent No.2,

which is evident from the show cause notice issued to the Respondent No.2 by the Petitioner.

24. Learned counsel for the Respondent No.2 further submits that the domestic enquiry conducted by the Petitioner was not in accordance with the Rules and Regulations as rightly held by the Learned Presiding Officers in both instances. The Petitioner failed to prove the charges against the Respondent No.2 before the learned Industrial Tribunal in terms of the provisions of Industrial Disputes Act, 1947.

25. The learned counsel for the Respondent No.2 further submitted that the appointment letters issued by the Petitioner contain specific clauses 15 &13 under the heading, "Discipline" which shows that the services of Respondent No.2 would be governed by the Rules applicable to Central Government Employees.

26. Learned counsel for Respondent No.2 further refuted the fact that the service of Respondent No.2 was for a fixed term. It has been argued on behalf of Respondent No.2 that she was allowed to remain in the service beyond the term without fixing any further tenure which implies that she was allowed to continue in service till the date of superannuation. Further, the fact that Respondent No.2 was allowed to appear for the selection test for promotional post also shows that her services were not for a fixed term.

27. Learned counsel for Respondent No.2 admitted the fact that she received payments from the Petitioner as per the order dated 30.11.2005 passed by this Court. However, reliance has been

placed by the learned counsel for Respondent No.2 on the judgment passed by the Hon'ble Supreme Court in the case of ***D.P Maheshwari Vs Delhi Administration 1983 (4) SCC 293***, to argue that the receipt of payments by Respondent No.2 under section 17-B of the Industrial Disputes Act, 1947 is neither a charity nor by grace of the Petitioner as the same has been paid to her as her legal right and entitlement in terms of the provisions of the statute. Therefore, the Petitioner should not be allowed to take any benefit by highlighting the fact that they paid huge amounts of money to Respondent No.2 incompliance of the order dated 30.11.2005 passed by this Court in terms of Section 17-B of the Industrial Disputes Act, 1947.

28. In view of the aforementioned submissions, learned counsel for Respondent No.2 prays for dismissal of the present Writ Petition.

Legal Analysis

29. This Court heard the arguments advanced by the counsels for the parties and also examined the documents placed on record and the Judgments relied upon by the parties.

30. This Court, vide its earlier order dated 21.10.2002, remanded the matter to the learned Industrial Tribunal for reconsidering the present dispute on the basis of the rules which are applicable to the Respondent No.2/Workman. It is the case of the Petitioner Management that the employment of all the employees of the Petitioner, including Respondent No. 2 are governed by the TCS Rules. However, learned Tribunal, vide

impugned award, held that the alleged misconduct by Respondent No.2 ought to have been dealt by the Petitioner in accordance with the Central Service Rules. Learned Tribunal recorded its reasoning, which, *inter alia*, reads as under:

> *"6. I have heard the Learned A/R for the parties and carefully perused the record. My observations on the point as to what rules were applicable to the service of the workman are as under.*
>
> *7. This time the Management has placed on record a copy of A.W.H.O Terms and Conditions of Service Rules(Civilian),1987 (MW1/7). Clause 10 of the rules provides as under:*
>
> *"Notwithstanding anything to the contrary contained in the letter of appointment or these rules the service contract of an employee will be terminable forthwith without notice if after due enquiry it is established that the employee has been found guilty of misconduct under any of the following categories:*
>
> *(a) Non performance of duties or any defective performance of duties- This includes negligence, absence from duty for a continuous period of 10days without taking leave unless such absence is due to illness or accident or any other reasons beyond his control, proved to the satisfaction of the Management and for which he could not for reasons beyond his control, give prior intimation to the Management, loitering during office hours, sleeping or drunk while on duty, go slow or similar other defects or act and omissions in work or on grounds of moral turpitude*
> *(b) Intentional disobedience of any lawfulor any act or reasonable order of the Management as well as any*

act of insubordination to the management or any superior officer.

(c) *An act of bad faith or dishonesty or any act injurious to the interest of the AWHO.*

(d) *Acts subversive of discipline or undesirable activities which are inconsistent with the selfless and faithful discharge of his duties. This will include any other immoral or criminal act of such a nature that it make the employee unfit for the discharge of his duties and also if convicted of any criminal charge filed against the employee.*

(e) *Undesirable activities arising out of Union or other collective activities such as illegal strikes, picketing, gheraoing, holding and participating in meetings inside the office premises, collecting subscription in the premises, including the such like activities during working hours either within or outside the premises, use of abusive language or disturbing the peace of work*

(f) *An act which makes it unsafe for the Management to retain him in service*

(g) *Direct or indirect acceptance of any illegal gratification or any bribe of any nature whatsoever*

(h) *Misrepresentation or deliberate suppression or any false statement (s) made in the application or at the time of interview or during the course of employment with AWHO*

(i) *Any other act of commission or omission not consistent with the recognized norms of behavior, conduct of work.*

8. *Clause 14 deals with code of conduct, sub clause (i) to clause 14 provides as under:*

(a) *Every employee shall, in accordance with the Rules, diligently perform the duties entrusted to him*

(b) *The employees, except to their superior authorities shall not divulge any secret and shall be bound to*

secrecy in all matters pertaining to the affairs of the AWHO

(c) *No employee shall remove even temporarily any of the books, records, files, documents, papers of the AWHO from the office premises without prior permission of the officer in charge of the section in which he is working.*

(d) *Every employee, shall during the office hours, except when he is on leave, devote his time and attention to the official functioning of the AWHO and in all respect conform to the directions and regulations made by the Management and obey its orders in respect of the official functioning of the AWHO and use his utmost endeavor in the interest of AWHO at any such place or places and in any such capacity as Management from time to time may decide .*

(e) *No employee shall take home any office keys of almirahs, cupboards, table drawers, boxes or any other office keys of whatsoever nature, office seals, rubber stamps, and so on under any circumstances. The office keys will be deposited at close of work with the officer nominated specially for the purpose.*

(f) *Every employee shall keep himself informed about rules, regulations, orders and instructions issued by the Management from time to time particularly those having bearing on the duties entrusted to him from time to time and shall further ensure that the provisions of the same are duly complied with. An employee found guilty of non-compliance of such rules, regulations or orders and instructions shall be deemed to be guilty of misconduct under these rules and shall also be liable for all consequences resulting therefrom.*

(g) *No employee shall enter into any monetary dealings with his colleagues or beneficiaries or claimants of AWHO nor should he accept any present from them*

(h) *No employee shall use AWHO name or properties for his own benefits.*

(j) *No employee shall during the tenure of his employment, give his service or advice to any other person or agency or carry on any other work, business or trade.*

(k) *On first joining the AWHO and subsequently on Ist January every year, each employee will submit a return of property in a form prescribed for this purpose by the Management.*

(i) *Any contingency which is not mentioned above, the employee will be governed by the Civil Service Regulations, Govt of India as amended from time to time.*

9. Clause 32 deals with 'Discipline' which reads as under:

"All employees will be governed by the Code of Conduct mentioned at Para 14 above. The conditions as laid down in the various orders of the AWHO will be applicable. Further all rules as may be framed, modified or amended from time to time by the Executive Committee shall be binding on all the employees.

10. Ld.A/R for the workman in support of his case referred to 1993 (4) DLR 126, Sh.D.K Yadav Vs JNA Industries Ltd, AIR (1999) SC 1843 H.S Chandra Shekharachari Vs Divisional Controller, K.S.R.TC & Another, AIR (1989) SC 568 H.L Trehan & Ors Vs UOI &Ors. Ld. A/R for the Management on the other hand referred to AIR 1994 SC 1343, AIR 1995 SC1163,AIR 1996 SC 1001, 1996(10)SC 597, 1997 (11)SCC 521 and 1991 (82) DLT and a judgment of this Court in ID Case No. 101 of 1995 in re. Raj Kumar &Ors Vs Indian Railway Welfare Organization.

11. The bare perusal of the rules stated above makes it clear that in case of any contingency which has not been mentioned specifically in the rules

itself, the employee will be governed by the Central Civil Rules, Government of India. MW-1 also admitted in his cross examination that Central Civil Rules were made applicable to the workman as per Clause 14 of the Letter of Novation of contract dated 25.9.90 but only as a guideline only as and when required. The concept of guideline as and when required does not find mention in the Rules filed by the Management on record. The gist of the rules clearly indicates that in order to meet any contingency not laid down in the rules shall be dealt with in accordance with the Central Service Rules. Therefore, I am of the considered view that the alleged misconduct or indiscipline of using unfair means during the course of examination has to be dealt with by the Management in accordance with the Central Service Rules. There would be no quarrel to the fact that the Management did not follow the central Service Rule while holding domestic enquiry into the alleged misconduct as also held by my predecessor in his detail order dated 09.10.98.The service conditions of the workman has to be dealt with in accordance with the Central Service Rules as submitted by the Management. Since the management failed to follow the Central Service Rules while holding domestic enquiry, the action of the Management is regarded as illegal, unlawful and unjustified. Accordingly, the management is directed to reinstate the workman with full back wages and continuity of service."

31. It is an admitted position that TCS Rules were made applicable to the employees of the Petitioner with effect from 01.07.1987. Subsequent to the adoption of TCS Rules, the Petitioner issued appointment letter dated 10.10.1987 to Respondent No.2. As per Clause 13 of the said appointment letter, Respondent No.2

will be governed by the Code of Conduct mentioned in the TCS Rules as well as the Disciplinary Rules as are applicable to the Central Government Employees. The said employment contract was further extended till 30.09.1993 by the Novation of Contract letter dated 25.09.1990. Perusal of Clause 13 of the appointment letter dated 10.10.1987 and Clause 14 of the Novation of Contract letter dated 25.09.1990 make it clear that the services of Respondent No.2 were to be governed by the Code of Conduct mentioned in the TCS Rules as well as the Disciplinary Rules as applicable to the Central Government employees.

32. Clause 7 of the TCS Rules explains *'misconducts'* under the said Rules. Clause 14 of the TCS Rules further explains the Code of Conduct to be adhered by the employees of the Petitioner. Clause 14(l) of the TCS Rules further clarifies that any contingency which is not mentioned in Clause 14 of the TCS Rules, will be governed by the Civil Service Regulations, Government of India. TCS Rules is silent about the procedure to be followed by the Petitioner Management while conducting disciplinary proceedings under the said Rules against an employee. Whereas, Clause 13 of the appointment letter dated 10.10.1987 followed by Clause 14 of the Novation of Contract Letter dated 25.09.1990, makes it evident that the Disciplinary Rules as are applicable to the Central Government Employees

will be applicable to Respondent No.2. Central Government employees are governed by Central Service Rules.

33. In light of the aforesaid discussed provisions, this Court is of the considered view that Clause 13 of the appointment letter dated 10.10.1987 read with Clause 14 of the Novation of Contract Letter dated 25.09.1990 read with Clause 14 (l) of the TCS Rules clarifies the position and the Petitioner, therefore, ought to have followed the Central Service Rules while conducting the enquiry against Respondent No.2.

34. As far as the argument of the Petitioner that it is not a State under Article 12 of the Constitution of India and therefore, the Central Service Rules are not applicable to the employees of the Petitioner, is concerned, this Court is in agreement with the ratio of ***Army Welfare Housing Organisation (supra) and the above-noted judgments of High Court of Telangana in W.P (C) No. 95/2019 and Writ Appeal No. 541/2019***; however, in the present case the Petitioner, out of its own accord and free will, agreed to implement the Disciplinary Rules as applicable to the Central Government Employees to the employees of the Petitioner including the Respondent No.2. The said provision has been consciously incorporated by the Petitioner in clause 13 in the appointment letter dated 10.10.1987 issued to the Respondent No.2 followed by Clause 14 of the Novation of Contract letter dated 25.09.1990. Moreover, as per Clause 14 (l) of the TCS Rules, if there is any contingency which is not mentioned in the said Rules, the Central Service Rules will be

applicable to the employees of the Petitioner including Respondent No.2. No specific procedure is prescribed under the TCS Rules for conducting domestic enquiry against an employee. Even if the Petitioner is not covered within the meaning of "State" under Article 12 of the Constitution of India, the Petitioner Management, on its own free will and volition, has adopted the Disciplinary Rules as applicable to the Central Government Employees. Therefore, it is evident that the Central Service Rules will be applicable to Respondent No.2 with regard to the disciplinary matters.

35. It is not disputed that the Petitioner did not conduct the domestic enquiry in accordance with the Central Service Rules. A specific issue was framed by the learned Tribunal, *'whether the enquiry conducted by the Management was illegal, unfair and against the principles of natural justice' (Issue No.1)*. The learned Tribunal, in its original award dated 09.10.1998, examined the said Issue No.1 and decided the same against the Petitioner Management. The finding of the learned Industrial Tribunal with regard to Issue No.1, *inter alia*, reads, as follows:

> *"11. ……..In fact, in this case no chargesheet was ever served on the workman. She was not supplied with the copy of the documents as well as the statement of witnesses. She took the departmental examination on 16.10.90. During the departmental examination, 7 candidates appeared. Lt.Col.R.N Sharma and Sh.L.D Gambhir, Consultant, Accounts, the two senior officers were the invigilators. The examination started at 1.35 pm and it was to continue upto 3.35 pm.It was for 2*

hours. At about 3.15 p.m, Lt.Col.R.N Sharma took a paper ball/slip which was put at the seat of the workman and that slip was annexed with the answers of the workman. Later on the workman was served with a show cause notice dated 23.10.1990(Ex.P-3) regarding using unfair means for examination. The contents of the show cause notice dated 23.10.1990, is reproduced as under:

"1. It has been reported by the Presiding Officer that during the test held on 16 Oct 1990, you use unfair means and obtain answer to the question from a staff member. This conduct on your part has been viewed seriously.

2.Please explain why disciplinary action should not be taken against you. Your reply should reach the undersigned on 24 Oct 1990.

R.K Malhotra
(Lt.Col.(retd))

She replied to that show cause notice and her reply is Ex.P.4 denying the use of unfair means in the examination. She was served with another show cause notice dated 13.11.1990 (Ex.P.5), the contents of which are reproduced as under:

"1. I am directed to inform you that the explanation forwarded by you vide your letter dated 24 Oct 90 is neither satisfactory nor convincing.

2. Please show cause as to why your service should not be terminated for using unfair means during test held on 16 Oct 90.

R.K Malhotra
(Lt.Col.(retd))"

She also replied to that show cause notice vide her reply (Ex.P.6)

12. It is significant to note that when she was served with these show cause notices, she was not given the statement of Lt.Col R.N Sharma, Sh.L.D Gambhir and Sh.Jagbir Singh Dagar who is alleged to have thrown the paper ball at her seat. In the enquiry proceedings, apart from these persons, Sh.P.K.Khanna, Asstt. Accountant(WitnessNo.5 in the departmental inquiry), Sh.S.C Sen, Accounts Clerk (Witness No.6 in the departmental enquiry) Sh.Babu Ram (Witness No.7 in the departmental proceedings) were examined, but statements were not given to the workman. It is clear that no chargesheet was ever served on the workman as provided under the rules stated above. No documents were supplied to her. Even the material documents such as slip alleged to have been written by the workman for the answers to Sh.Jagbir Singh Dagar and the answers written by Sh.Jagbir Singh Dagar were not supplied to her. It is also a fact that she was not allowed to be represented through defence assistant.

13. Not only the enquiry was not conducted in accordance with the procedure under the rules. Rule 11 stated above provided that if the delinquent officer did not plead guilty then the inquiring authority shall require the presenting officer to produce the evidence by which he proposes to prove the articles of charge that means it is for the disciplinary authority to adduce evidence to prove the misconduct on the part of the delinquent employee.

14. In this case, the enquiry was conducted by Lt.Col Sh. Man Mohan Singh on 21.12.1990. Straight way he recorded the statement of the delinquent workman. She was examined as Witness No.1.This is contrary to the principles of natural justice. It is settled law that in a domestic enquiry,

as in regular trial, the burden of proof to establish the guilt of a charge is always on the accuser not on the accused. This burden must be discharged fully. The employer should take steps to first to lead evidence against the workman charged, giving him an opportunity to cross examine the said evidence and then to ask the concerned workman whether she wants to give any explanation about the evidence led against her. If the delinquent employee seeks to cross examine/witness examination in proof of charge, he/she should be given an opportunity to cross-examine them and thereafter his statement is to be recorded and the statement of the witnesses. The enquiry was first conducted on 21.12.1990. Statement of delinquent employee was recorded. She was examined as witness no.1. Lt.Col. Sh.R.N Sharma was examined as Witness No.2. She was cross examined on the very first date, may be by the enquiry officer himself. It is against all the principles of natural justice whereby an accused is being examined and cross examined first. Lt.Col.R.N Sharma was not put by the enquiry officer for cross examination. It seems that enquiry was there after held on 26.12.90 and on that day also Sh.Jagbir Singh Dagar was examined and one Mr. Harish Kumar Taneja, Accounts clerk was examined. Thereafter on 27.12.90 certain questions were put to Lt Colonel Sh. R.N Sharma by the Enquiry officer himself and then again, additional questions were put to the delinquent work man on 31. 12. 90. On the same day, Sh. P.K Khanna, Assistant Accountant was examined. And thereafter, on 01.01.1991, Sh. S.C Sen Accounts Clerk was examined and on 02.01.91 Sh.Baru Ram was examined. And the inquiry findings were given on 02.01.91 by Lt. Colonel Man Mohan Singh.

15. Lt. Colonel Man Mohan Singh was perhaps not aware any procedure of holding enquiry. The

enquiry preceding shows no adjournment, date. none of the witnesses examined were allowed to be cross-examined by the workman. And his enquiry report was considered by the management and the management was well aware of the fact that the inquiry was not conducted in accordance with the principles of natural Justice, that is why the management vide their letter dated 19.02.91 appointed Lt. Col P.C Saha as the Enquiry Officer. The content of the letter dated 19.02.91 are reproduced as under:

"Lt. Col Man Mohan Singh, DDAG CW-5, was detailed as an inquiry officer vide our note of even number dated, 19, December 1990. It has now been intimated by AWHO that the Presiding officer has submitted his report on 3rd January, 91.On perusal of the proceedings. It has been found that the proceedings are incomplete for minor reasons. Lt Col PC Saha, AAG CW-5 is detailed as inquiry officer in place of late Lt, Col Man Mohan Singh to finalize the enquiry. His telephone number is 301266.

B. Prasad
CSO
DAAG CW Coord"

No information of this was given to the workmen. Lt Col P.C Saha conducted the enquiry, he did not served any chargesheet on the delinquent employee. He appeared as witness in this case and he stated that he was not asked to serve any chargesheet. He was also examined the workmen as witness No.1 and asked her if she wants to cross examine any of the witness. She requested for the cross-examination of Sh. Jagbir Singh Dagar and Lt Col R.N Sharma and cross-examined them. And thereafter, the enquiry report was submitted by Lt. Col P.C. Saha on 26.03.1991 stating that no additional evidence has

been found during the cross-examination or recording the statement of additional witnesses hence, there is no change in the findings and opinion of the Court. This is certainly no inquiry. Again, no documents were supplied. Even at the time of second inquiry no Chargesheet was served on the workman.

16. Even as is evident from the letter of the Workman, that she was not supplied with the enquiry report. It is submitted that it is admitted by the management that the enquiry report was not supplied, but the workman was asked to inspect their inquiry file. The Workman has specifically testified that she was not allowed to inspect the inquiry report. The enquiry report of Lt. Col P.C Saha was dated 26.03.91. It is settled in law of the Judgment of Hon'ble Supreme Court in case of Union of India Vs Mohd. Ramzan Khan 1991. Vol. 1 SCC P. 588 that it is binding on the management to furnish the enquiry report to the delinquent employee. It was made effective from 20.03.1990. The Judgment was prospective in effect. Since the enquiry report is dated 26.03.91, hence, it was obligatory on the part of the management to furnish the enquiry report to the delinquent employee, but the same was not furnished.

17. In fact, the workmen in her reply in response to the letter as to why her service should not be terminated on the basis of the inquiry report, it was given detailed the reply dated to 29.04.91 as to how she was denied the fair opportunity to defend herself in the enquiry.

18. In fact the entire enquiry was conducted against the CCA (CCS) Rules.

19. Even otherwise as per section 11-A of the Industrial Disputes Act, now the courts are clothed with power to see as to whether the findings of the

enquiry officer are correct as to whether he has appreciated the evidence correctly.

20. The sole witness examined in the enquiry is S. Jagbir Singh Dagar who is alleged to have thrown a paper ball at the seat of the workman and the same was caught immediately by Lt Col R.N Sharma invigilator as at that time he was standing just behind that seat of the workman, it is not the case with the management that Workman was taken any help from that paper ball. Mr. R.N Sharma states that workman has not left her seat during the entire examination. The other invigilator Sh. L.D Gambier also stated that during the entire examination the workman has not left her seat. Even Sh. R.K Khanna (witness No.5) in the enquiry stated that the workman did not leave her seat during the examination. But Mr. Jagbir Singh Dagar stated that when he crossed Veranda where Mrs. Neena Jain, the workman was taking her examination, she requested him to help her, he ignored her request. And when the half time was over, she left a piece of paper in his seat in room number 27 with a question written on it and asked him to give answer. He produced that slip in the enquiry, he further testified that he reluctantly solved the question on another sheet of paper and this slip was collected by the workman five minutes before the finish of the examination. As per his statement, the workmen came to his room twice. Firstly just after the halftime over she left a slip containing the questions and again just five minutes before the examination, she collected the answers. But as per both invigilators and Sh. P.K Khanna, another person who was taking the examination, the workman was never left the room during the entire period. It is a vital contradiction in the statement of the witness and it goes at the very root of the proceedings. The enquiry officer has not discussed this point at all in

his inquiry report. There are other contradictions also.

21. From the aforesaid discussions, I am of the opinion that the management has failed to prove that the inquiry was conducted in accordance with the rules and the principles of natural Justice. This issue is accordingly decided against the management……"

36. This Court has examined the enquiry conducted by the Petitioner in detail and concurs with the finding of the Ld. Tribunal in its original award dated 09.10.1998. The enquiry conducted by the Petitioner was illegal, unfair and against the principles of natural justice in the light of the afore-stated discussion and legal analysis.

37. As held by the Hon'ble Supreme Court in ***Bharat Forge Co. Ltd. v. A.B. Zodge and Another reported as [1996] 4 SCC 374,*** even if the domestic inquiry conducted by the employer is found to be perverse, the employer is entitled to adduce evidences before the Tribunal to prove the alleged misconduct against the employee. However, the Petitioner Management failed to adduce any evidence before the learned Industrial Tribunal to prove the alleged misconduct against the Respondent No.2. The Petitioner Management examined two witnesses at the initial stage and one additional witness at a later stage after the matter had been remanded back for fresh consideration. However, none of these witnesses could prove the alleged misconduct against the Respondent No.2. The

Petitioner Management has thus miserably failed to prove the alleged misconduct against the Respondent No.2.

38. As discussed herein above, the domestic enquiry conducted by the Petitioner Management stands vitiated. The Petitioner failed to prove the alleged misconduct against the Respondent No.2 before the learned Tribunal. In these circumstances, termination of Respondent No.2 which was based on the domestic enquiry, is also illegal and not sustainable in law. Therefore, the said domestic enquiry has been rightly set aside by the learned Industrial Tribunal vide the impugned Award dated 09.06.2003. As a natural corollary thereof, the learned Industrial Tribunal directed the reinstatement of Respondent No.2 with full back wages and continuity in service.

39. It is well settled principle of law that relief of reinstatement with full back wages is not to be granted mechanically. While granting, the reinstatement with full back wages, several factors are required to be taken into consideration. The Hon'ble Supreme Court in ***Madhya Pradesh Administration Vs Tribhuban 2007 (9) SCC 748*** had an occasion to examine the said legal principle. While substituting the order of *'reinstatement with full back wages'* with Rs.75,000/- as consolidated compensation to the workman, the Hon'ble Supreme Court, *inter alia*, observed as follows:

"The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed re-instatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrage all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secretary, State of Karnataka and Others v Umadevi (3) and Others [(2006) 4 SCC 1], and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors."

40. Similarly, in ***U.P. State Road Transport Corporation Vs Man Singh (2006) 7 SCC 752***, while granting Rs.50,000/- as compensation to the workman instead of 'reinstatement with

back wages', the Hon'ble Supreme Court held, *inter alia*, as follows:

> *"7. ……In any event, it would be wholly unjust at this distance of time. i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.*
>
> *8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000 to him."*

41. In the present case, the Respondent No.2 was in a fixed term contract with the Petitioner Management and her tenure was only upto 30.09.1993. As per the TCS Rules, the Civilian employees are employed with the Petitioner on a temporary basis for a period of 3 years and an employee will automatically cease to remain in the employment of the Petitioner, on expiry of the contract period of his/her employment. The relevant portion of the TCS Rules has been reproduced herein below:

> ***"Employment.***
> *7 (a) Civilians, may be employed in the AWHO for a particular specialized work for a limited period, not exceeding three years at a time on such terms as may be agreed upon with the concerned persons.*
> *(b) Only, such persons who have not attained the age of 58 years on the date of application will be eligible to*

offer themselves for employment in the AWHO in order to ensure that they serve for a minimum period of three years till the age of 58 or till their services are required, whichever is earlier.

(c) Employment in the AWHO will be on contract basis for a period of three years which will also include the period of probation, provided that where considered expedient, the period of employment may be less than three years and limited to such period as will expire on the date on which such an employee attains the age of 58 years or upon the expiry of the terms of contract whichever is earlier.

(d) An employee if he desires may apply in the prescribed form within not less than 3 months before the cessation of his employment in the AWHO for further employment. The appointing authority may consider such an employment for further employment, along with other eligible members having regard to the requirement of work, policy of the management, the past record of service of the employee. All other things being equal preference will be given to the said AWHO employees. However, an employee will be intimated decision on his application for further employment before expiry of his contract.

42. Applying the legal principles as enunciated by the Hon'ble Supreme Court in ***Madhya Pradesh Administration (Supra)*** *and* ***U.P State Transport Corporation (Supra)***, this Court considers the following relevant facts:

(i) The service of Respondent No.2 with the Petitioner Management was for a fixed term, i.e. till 30.09.1993. The Petitioner Management terminated the service of Respondent No.2 with effect from 18.06.1991. Hence, as per the fixed

term contract between the parties, Respondent No.2 was left with approximately 30 months of service.

(ii) As per the TCS Rules, the extension of service of Respondent 2 with the Petitioner Management was not automatic since the appointing authority of the Petitioner as per Rule 7 *'may consider the further employment of an employee along with other eligible members having regard to the policy of Management, requirement of work, past record of the employee etc'*. In view of this, it would not be correct to assume that the service of Respondent No.2 with the Petitioner Management was of permanent nature.

(iii) Since the engagement of Respondent No.2 was based on fixed term employment, it was always open to the Petitioner Management not to extend the services of Respondent No. 2 for further term as the said extension was dependent upon the conditions as mentioned in Clause 7(d) of the TCS Rules.

(iv) It is not the case of Respondent No.2 that the Petitioner granted permanent appointment to any of its civilian employees contrary to TCS Rules.

(v) It is also not the case of Respondent No.2 that the services of her junior civilian employees were regularized by the Petitioner Management after her illegal termination.

(vi) It is an admitted position that Respondent No.2 is not working for the past 17 years (approximately) as she lost her last job on 14.11.2004. On the basis of the said statement of Respondent No.2, this Court, vide order dated 30.11.2005,

allowed her Application for wages under Section 17-B of the Industrial Disputes Act, 1947 and the Petitioner is making the said payment till today.

(vii) Respondent No.2 had already attained the age of superannuation.

43. Having regard to the totality of the facts as stated here in above, this Court is of the considered opinion that an order of reinstatement with back wages must be eschewed, being inequitable. It would be just, proper and reasonable to award a lumpsum monetary compensation to Respondent No.2 towards full and final satisfaction of her claim for reinstatement with back wages and continuity of service. Therefore, this Court considers it just and reasonable to award a sum of Rs.1,00,000/- (Rupees One Lakh only) to Respondent No.2 in lieu of her reinstatement and back wages as directed by the learned Industrial Tribunal vide the impugned award dated 09.06.2003. The impugned Award of the learned Industrial Tribunal is modified to that extent.

44. Considering the time elapsed while deciding the present dispute, this Court further directs the Petitioner Management to make this payment of Rs.1,00,000/- to Respondent No.2 within a period of four weeks from the date of receipt of this order failing which the said amount will bear an interest of 9% p.a.

45. It has been pointed out that the Petitioner had already paid Rs.17,51,645/- to Respondent No.2 (between 15.07.2004 till

October 2019)in compliance with the direction of this Court as stipulated in the order dated 30.11.2005. The Petitioner has made the said payment to Respondent No.2 under Section 17-B of the Industrial Disputes Act, 1947. As held by the Hon'ble Supreme Court in ***Dilip Mani Dubey Vs M/s SIEL Limited &Anr reported as 2019(4) SCC 534***, the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. It is a well-settled principle of law that even if the Court/Tribunal eventually upholds the termination order as being legal against the workman, yet the employer will have no right to recover the amount already paid by him to the delinquent workman pursuant to the order under Section 17-B of the ID Act during the pendency of the proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner to Respondent No.2 under Section 17-B of the Industrial Disputes Act, 1947 is neither recoverable nor adjustable.

46. In view of the above clarifications, the present Writ Petition is partly allowed to the extent as mentioned herein. No order as to cost.

GAURANG KANTH, J.

JULY 14, 2022