

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

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O.A./350/01589/ 2016



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Bikash Raj,
Son of late Girin Ch. Raj,
About 59 years,
Worked as GDSMC under Chakmakrampur B.O.
Village Bela Geria,
Post Office – Paparara,
District – Paschim Midnapur,
Pin 721 149, West Bengal.

..... Applicant.

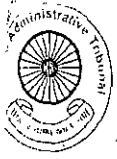
Versus

1. The Union of India
Through the Secretary to the Govt. of India,
Ministry of Communications,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi – 110 116.
2. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
C.R. Avenue,
Kolkata – 700 012.
3. Senior Superintendent of Post Offices,
Midnapore Division,
Midnapore, Pin – 721 101.
4. Assistant Superintendent of Post Offices,
Kharagpur Division,
Post Office – Kharagpur,
District – Paschim Midnapur – 721 301.

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : None



Date of Order: 1.9.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

The respondents Counsel Mr. P.N. Sharma were heard an earlier occasion. The respondents have used written arguments. We proceed to invoke Rule 16(1) since none appears today on repeated calls.

2. The relief sought for by the applicant, in this O.A., are as under:

"8.i) Charge sheet dated 30.07.2012 (Annexure A-6 to the petition cannot be sustained in the eye of law and therefore the same may be quashed.

ii) Order of Punishment dated 29.01.2016 issued by the DA vide office order no. PF/GDSMC/ Chakmakrampur/B. Raj cannot be sustained in the eye of law and therefore the same may be quashed.

iii) Order passed by the Appellate Authority vide Memo no. FD/Rules 10/Bikash Raj/ Disc case/ 2012-13 dated 19.09.2016 is bad in law and therefore the same may be quashed.

iv) An Order do issue directing the respondents to reinstate the applicant in service and grant him all consequential benefits."

3. It is discernible from the records that a minor Penalty Charge sheet was issued to the applicant in the year 2008. The said charge sheet was dropped in the year 2012. A major penalty charge sheet was issued on the self same issue. The applicant was removed from service as a measure of penalty. Appellate Authority affirmed the punishment.

4. The legal lacunae in the conduct of proceedings, as highlighted by the applicant are as under:



(I) A wrong interpretation of Director General's Instructions (i) below Rule 10 of GDS Rules 2011, resulted in issuance of a fresh charge sheet by the Disciplinary Authority under the direction of the higher Authority. Neither the postal Gramin Dak Sevak nor Rule-14 of the CCS (CCA) Rules – 1965, empower the Disciplinary Authority to issue a fresh charge sheet by dropping the earlier charges.

Therefore, a second charge sheet was not tenable when the earlier charges has been adjudicated upon.

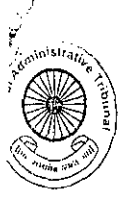
(II) The important defence documents were withheld. As a result the applicant could not effectively participate in the inquiry,

Whereas Hon'ble Apex Court in **Raizada Trilok Nath vs Union of India** [1967 SLR (SC) 759] had been pleased to observe that the charged employee did not participate in the inquiry because he was not allowed access to some relevant documents. It cannot be inferred that he had adopted a defiant attitude. Had the copies of the documents been furnished to him after perusing them he might have asked for an oral inquiry to be held. The non – supply of the copies of the relevant documents to him was held to have caused prejudice to him.

(III) The charge sheet dated 30.07.2012 does not disclose any evidence of lack of devotion to duty, which is required under provision of rules 21 of the GDS(C&E) rule – 2011.

(IV) The Inquiry Authority failed to analyse materials and evidence on the guilt of the charged official, to show how he lacked devotion to duty. The I

O submitted his Inquiry report mechanically without application of mind and without analysis of Rule 21 of the GDS (C&E) Rule 2011.



(V) The Disciplinary Authority also failed to analyse and effectively conclude how applicant failed in devotion to duty. The Disciplinary Authority issued the charge sheet dated 30.07.2012 under instruction of the higher authority, but failed to apply his mind at the time of imposing penalty on 29.01.2016.

(VI) The Appellate Authority wrongly rejected the appeal under Rule-13 of GDS(C&E) Rules-2011 when Rule 13 of the GDS (C&E) Rules-2011 is not applicable and a clear provision in Rule 18 of the GDS (C&E) Rules-2011 exists whereunder the Appellate Authority is to consider the appeal. The appellate authority also failed to establish the charge applicant's of failure devotion to duty.

(VII) Enormous Delay of about 8 years in conclusion of the Disciplinary proceeding prejudiced the applicant.

5. At hearing following additional grounds on the manner of conduct of proceedings were raised:

- (1) *The ASPO being a complainant and/ or witness could not have penalised the applicant.*
- (2) *The Disciplinary Authority's order is cryptic a non speaking one.*
- (3) *The penalty of removal from service is not commensurate with the offence charged with.*

6. This Tribunal called for clarification to ascertain the following:

- (i) *who is the complainant in regard to the charges that has lead to the proceedings;*

- (ii) who is the disciplinary authority in regard to the present applicant and who has issued the penalty order.
- (iii) whether the applicant sought for production of documents and whether the same was entertained;
- (iv) who is the appellate authority competent to look into the appeal and pass order."



7. In response, the respondents have answered as follows:

"1. Ans: The Victims (i) S.K. Hazra being then ASPOs (Hq.) Midnapore Divisional office

And

(ii) Sri Bijoy Kumar Ballav, then accountant, Midnapur Division.

2. Ans: Assistant Superintendent of Post Offices Sri Aniruddha Biswas Kharagpur Sub Division, Kharagpur.

The penalty order has been issued by same disciplinary Authority Aniruddha Biswas.

3. Ans: Assistant Superintendent of Post Offices Sri Aniruddha Biswas Kharagpur Sub Division, Kharagpur.

They penalty order has been issued by same disciplinary Authority Aniruddha Biswas.

4. Ans: Yes. The charged GDSMC/ applicant requisitioned two documents for production in the shape of DG institutions (i) below Rule 10 of GDS (G&E) Rules and GDS (C&E) Rules being Ext D4 and D5 which are

(a) SSPOS, Midnapore Division on Memo No. B-40 / Postmen and Group D Misc. dated 07.05.2007.

(b) DGP & T letter No. 114 / 324/7B – Disc. II dated 05.07.1979 under head, 'Reasons for cancellation of original charge sheet to be mentioned if for issuing a fresh Chargesheet' and both documents were supplied to the charged DGDMC and marked as Ext on behalf of charged GDSMC.

The Sr. Superintendent of Post Offices Midnapore Division is the appellate authority.

8. Further, the respondents have clarified as under:

In course of his work on AD hoc basis as postman at Kharagpur Sub Division, the applicant came to know about the order issued by ASPOs (HQ.) Midnapore Division under D.O. memo No. 6-40 / Postman and Group D / Misc. dated 07.05.07, calling for option from the GDS to work on adhoc basis in the vacant Post of Postman and Gr. D. Such order was issued prescribing the age limit as an additional requirements and on this count the applicant found himself ineligible and the applicant became enraged at this new rules regarding the age limit. So in the afternoon of 17.05.2007 the applicants who happens to be a divisional Secretary of CPI(M) backed union AIPEDU, in a fit of rage reached infornt the table of the ASPOs (HQ) Midnapore and challenging the validity of said order made insulting altercations and threats and committed the offences as stated in charge Memo against the applicants. Previously the charge memo was for minor

13

penalty but later on after the consideration of gravity of charge another charge memo for major penalty with sufficient reasons was issued under Memo No. PF/GDSMC Chakmakrampur / B. Raj/dated at Kharagpur the 27.07.2012 and the applicant Bikash Raj was intimated as follows:-



"The Memo of charge sheet for minor penalty proceeding under Rule 10 of GDS (conduct and employment Rules 2001 was issued under this office Memo of even no dated 07.05.2008 against Sri Bikash Kumar Raj GDSMC, Chakmakrampur B.O. in account with Madpur S.O. on the charge of calling bad name to his higher authority as well as threatening to beat them. The Charge against Sri Raj was so grave in nature that the undersigned considers it justified to issue fresh chargesheet for major penalty proceedings which will be appropriated to the nature of charge.

Now, therefore the memo of charges issued against Sri Raj under this office memo of even no dated 07.05.2008 is hereby dropped under provisions of Director General's Instructions (1) below Rule 10 of GDS (Conduct and Employment) Rule 2001 now replaced by GDS (Conduct and Engagement) Rules 2011 without prejudice to any action being taken subsequently".

Thereafter fresh charge memo was served on the applicant and after his reply, the disciplinary proceedings under Rule 10 of GDS (C&E) Rules 2011 against applicant GDSMC vide ASPOs, Kharagpur Sub Division Memo No. PF/GDMC Chakmakrampur / B. Raj dated 30.07.2012 commenced.

The applicant participated in the enquiry proceedings held on 29.05.2013, 25.04.2013, 16.07.2013 and 13.08.2013 along with his defense assistant Sri Birendra Nath Maiti, SPM, salua. The defence assistant Sri Birendra Nath Maiti did not attend the proceedings held on 12.03.2014 as such no progress could be made. The charged applicant though attended the proceedings on 17.04.2014 with his defense assistant Sri B. Maiti but the inquiry proceedings had to be stayed due to submission of review petition by the charged applicant. Any way enquiry proceedings was re-opened on the strength of ASPOs, Kharagpur sub Division letter PF/GDSMC/Chakmakrampur/B. Raj dated 27.04.2015.

The charged applicant presented himself to be examined in his own behalf as DW1 Claiming during through his examination in chief that he had not been to the O/O the SSPOS Midnapore Division on 17.05.07 in reply to CEQ No. 1 that he had been at Kharagpur S.O. on 17.05.07.

At the instance of charged applicant, Sri Aniruddha Biswas ASP Kharagpur sub division being Disciplinary Authority was Summoned to appear as a defence witness but who did not appear to give in evidence as a defence witness. Therefore the charged applicant produced himself as a witness to be examined in his own behalf.

9. The respondents have made faint attempts to justify their action while responding to the allegations of the applicant. The respondents have responded saying,

- (i) On the issue whether once the chargesheet is dropped or withdrawn a fresh chargesheet is permissible the respondents. The respondents have submitted that "it is on record that disciplinary proceeding had not been commenced on the earlier charge sheet and the merit of the case had not come to fore. In spite of that the plea of the charged applicant was that since the original chargesheet has been withdrawn so the charge sheet impugned her in the O.A. should be declared to be nonest.



In Manjit Singh vs Union of India reported in 2017 (1) SLR 208 (CAT New Delhi) Hon'ble Principal Bench has held in para 8 that charge sheet can not be set aside merely on account of the fact that two chargesheet have been issued and the Hon'ble Principal Bench has disposed of the said O.A. with direction to the respondent department to pass appropriate order either for consolidation of the two charge sheet or suppression of one of the chargesheet as the proceedings could only be continued on the basis of one of the chargesheets.

In addition to above in Alok Dey Roy Vs., Union of India, Hon'ble Calcutta High Court has observed in para 7 as follows":-

"7. In the instant case it appears that after withdrawal of the charge memo a fresh charge memo has been issued without assigning the sufficient reasons thereof as such there is a breach to comply with Board's decision which subsequently became rule in the procedural law of the departmental proceedings.

Further in paragraph 9, Hon'ble Calcutta High court has observed that the rule is binding to the Railway officer, who initiated the departmental proceedings. It has not been done in the instant case, accordingly there is a mandatory breach and the impugned charge memo being the second charge memo on withdrawing the earlier charge memo is not legally sustainable due to the lack of sufficient reasons for issuing the fresh charge memo on withdrawing the earlier charge memo. It accordingly is set aside and quashed. However the quashing of the second charge memo as issued as withdrawing the first charge memo will not debar the respondent Railway Authority to issue appropriate charge memo following who under Index No. 1033 as referred to above namely specifying the sufficient reasons in the charge memo itself for issuing the fresh charge memo. In the instant case Rule 15(9) speaks for reasons for cancellation of original chargesheet to be mentioned if for issuing a fresh charge sheet which clearly provides the relevant provisions said Rule is annexed herewith and marked as AR/2. The respondent has complied with said provision in no uncertain terms which is evident from A/5 of the O.A. The said memo interalia speaks that "the charge against Sri Raj was so grave in nature that the undersigned considers it justified to issue fresh chargesheet for major penalty proceeding which will be appropriate to the nature of charges."

- (ii) On the allegation that the ASPOS Kharagpur Sub division did not supply the requisitioned documents but supplied one irrelevant Rule i.e. DGP & T letter No. 114 /324/ 78 Disc. II dated 05.07.79. The respondents have contended that *"these have been supplied"*.
- (iii) On the allegation that Sri Aniruddha Biswas being Disciplinary Authority ASP, Kharagpur Sub Division did not attend the board of inquiry even after receipt of summon issued by the IO and attracted the violation of departmental rule and is liable to face departmental proceedings. The respondents have not offered any arguments.
- (iv) About the delay it has been contended that *"the applicant is fully liable which is evident from the letter No. PF/ GDSMC Chakmakrampur /B. Raj Dated at Kharagpur the 26/05/2015 issued to the charged applicant"*.

10. On the conduct of proceedings the respondents have further averred as under:

"Sri Bikash Raj, Ex-GDSMC, Chakmakrapur B.O. in account with Madpur S.O. was proceeded against Rule-10 of GDS (Conduct & Employment) Rules, 2001 issued vide Asstt. Supdt of Post, Kharagpur Sub Dn Memo No. PF/GDSMC Chakmakrapur/B. Raj dated 07.05.2008 for misbehaviour with his superior authority and his threatening voice to beat the higher authorities.



He submitted his representation dated 21.05.2008 against the said action and wanted to be heard in person. But it was noticed by the disciplinary authority that the said charge sheet dated 07.05.2008 was not properly drafted to enable for personal hearing. Hence the said charge sheet was not finalized by the disciplinary authority (i.e. ASP, Kharagpur Sub Dn) and the said charge sheet was therefore dropped by the disciplinary authority vide Memo dated 27.07.2012 without prejudice to any future action being taken subsequently and the reason for issue of fresh charge sheet.

Accordingly, a fresh charge sheet was issued by the disciplinary authority vide Memo dated 30.07.2012 under Rule-10 of GDS (Conduct & Engagement) Rules, 2011 for violation of Rule-21 of GDS (Conduct & Engagement) Rules, 2011.

Sri B.N. Pal, Retired Supdt of Post Offices, South Hooghly Division was appointed as the Inquiry Officer to enquire into the Charges.

Preliminary hearing of the case started on 02.05.2013 and continued on 11.05.2013, 29.05.2013, 25.06.2013 & 16.07.2013. Thereafter regular hearings was started and continued on 13.08.2013, 12.03.2014, 17.04.2014, 18.05.2015, 21.05.2015, 02.06.2015 & 19.06.2015. The I.O. concluded the inquiry proceedings on 06.07.2015 and submitted his final report of Inquiry to the disciplinary authority (ASP, Kharagpur Sub Dn) on 21.09.2015 in which all two articles of charges brought against Sri Raj was established and proved.

A copy of the said I.O. report dated 21.09.2015, was forwarded by the disciplinary authority to Sri Raj on 04.12.2015 allowing 15 days time for submission of his defence. Sri Raj submitted his defence representation against the I.O.'s report to the disciplinary authority on 18.12.2015.

On conclusion of disciplinary proceedings Sri Bikash Raj was punished with the penalty of 'Removal from engagement which shall not be a disqualification for future employment by the ASP, Kharagpur Sub Dn vide ASPOS, memo No. PF/GDSMC Chakmakrapur/ B. Raj dated 29.01.2016 after affording all responsible opportunities and natural justice.

Aggrieved Sri Raj filed an appeal on 09.03.2016 to the Appellate Authority i.e. Sr. Supdt. of Post Offices, Midnapore Division. The said appeal has rejected by the Appellate authority vide Memo dated 19.09.2016 and the same was delivered to Sri Raj on 21.09.2016.

The respondents have further directed that as per daily order sheet no. 05 dated 16.07.2013 the defence document i.e. B-40/Postman & Gr. D/Misc. dated 07.05.2007 was supplied to Shri Bikash Raj on 16.07.2013 and the said document was marked as exhibit in the said hearing as D-4. Medical bill of Bikash Raj was not supplied as GDS official was not entitled for medical bill.

Nomination of Sri B.N. Pal, Retired Supdt of Post Offices, South Hooghly Division as Inquiry Officer vide R.O. letter No. PMG(SB)/SF(Vig)/IO&PO /Nomination/2012-13 dated 26.03.2013 was addressed to the SSPoS, Midnapore, it was kept in the Investigation Branch, Midnapore Divisional Office. Thus there was no question for supply of the said document as Asst. Supdt Kharagpur Sub Dn was not the custodian of the letter and I.O. was appointed by the Disciplinary Authority.

Further that, as per D.G. P&T letter no. 114/324/78-Disc-II dated 05.07.1979 (D-5) the reason for cancellation of original charge sheet or dropping the proceedings should be carefully worded. In the memo no. PF/GDSMC Chakmakrapur/ B. Raj issued the disciplinary authority (ASPOs, Kharagpur) dated 27.07.2012 the reason for dropping the charge sheet and issue of subsequent charge sheet were clearly mentioned as per rule.

The issue of biasness raised by the C.O. against the I.O. has been rejected by the appellate authority after due consideration of the merit of the case.

Furthermore that, it is not necessary to follow the provisions of Rule 14 of CCS (CCA) Rules 1965 literally in case of ED (now GDS) Agents but it is desirable to follow the provisions of that rule in spirit and that as the P.O.'s brief was not received by the I.O., the I.O. directed the P.O. to submit written brief within 17.08.2015 with further opportunity to the applicant to submit his written brief within 3 weeks from the date of receipt of P.O.'s brief."



11. In support of his arguments, the Ld. Counsel for the applicant cited the following decisions at the hearing:

ON FRESH CHARGE SHEET AFTER WITHDRAWAL OF THE EARLIER ONE:

- (i) **Harbhajan Singh Sethi vs. Union of India** reported in (1987) 3

Administrative Tribunals Cases 1 –

Where "Fresh charge-sheet, containing a charge which had been withdrawn" was "Held, permissible".

ON DELAY

- (ii) **State of Madhya Pradesh vs. Bani Singh and another** reported in 1990 (Supp) Supreme Court Cases 738

Where, having noted a

"Delay of 12 years in Initiating disciplinary proceedings" where "No satisfactory explanation for the inordinate delay in issuing charge memo stated". – Held, "it would be unfair to permit the departmental enquiry to proceed at this late stage".

- (iii) **State of A.P. vs. N. Radhakishan** reported in (1998) 4 Supreme Court

Cases 154 to contend that –

"Unexplained delay in conclusion of the proceedings", itself is an indication of prejudice caused to the employee "Disciplinary proceedings" should be quashed".

ON THE CHARGE

(iv) **Ram Kishan vs. Union of India and others reported in (1995) 6**

Supreme Court Cases 157 that –

"When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated. Therefore, the imposition of punishment of dismissal from service was harsh and disproportionate to the gravity of charge imputed to the delinquent constable and imposition of stoppage of two increments with cumulative effect would be an appropriate punishment."

ON THE ROLE OF ENQUIRY OFFICER:

(v) **M.V. Bijlani vs. Union of India and others reported in 2006 Supreme**

Court Cases (L&S) 919 that –

"Disciplinary proceedings being quasi-criminal in nature, there should be same evidence to prove the charge – Though proof beyond all reasonable doubt as required in criminal trial is not necessary in departmental proceedings, charges in said proceedings has to be proved by preponderance of probability."

"Enquiry officer – Function, powers and duties of – Held, he performs a quasi-judicial function – He upon analysing the documents most arrive at conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record – While doing so, he cannot take into consideration any irrelevant fact or refuse to consider the relevant facts – He cannot shift the burden of proof or reject the relevant testimony of the witnesses only on the basis of surmises and conjectures – He cannot enquire into the allegations with which the delinquent officer had not been charged with – Constitution of India, Art. 311".

ON THE ROLE OF THE DISCIPLINARY AUTHORITY:

(vi) **Union of India and others vs. B.N. Jha reported in (2003) 4 Supreme**

Court Cases 531 to contend that –

"In disciplinary proceedings – "Decision regarding must be independently taken by the disciplinary authority himself – He cannot act at the instance of a higher authority who had no role to play in the matter and had also bias against the officer – He must apply his mind to material on record and cannot by merely hearing the officer on the question whether he pleads guilty or not, draw up a charge-sheet against the officer – Held, valuable rights of the officer breached".



12. We heard the Ld. Counsels, considered the rival contentions, perused the materials on record delved into the implication of the decisions cited.

13. We note the following discussions in **B.N. Jha** (supra) :

In **S. Parthasarathi v. State of A.P. , (1974) 3 SCC 459** Hon'ble Apex Court proceeded on the footing of real likelihood of "bias" and there was in fact a total unanimity on this score between the English and the India courts.

Mathew, J. In that case observed: (SCC pp. 465-66, para 16)

"16. The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiry officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v Lannon (1968) 3 WLR 694 (WLR at p. 707)]. We should not, however, he understood to deny that the court might with greater propriety apply the 'reasonable suspicion' test in criminal or in proceedings analogous to criminal proceedings."

Lord Thankerton, in **Franklin v. Minster of Town and Country Planning**

1948 AC 87 (All ER p. 296 B-C), observed,

"... I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he

must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

- (ii) Hon'ble Court succinctly pointed out that



"Natural justice is founded on two basic principles:

(a) Audi alteram partem.

(b) Nemo iudex in causa sua.

The duty to act fairly is the theme of the principles of natural justice. The rule generally applies with full force to conduct leading directly to a final act of decision."

- (iii) To elaborate further, Hon'ble Court referred to the following:

Halsbury's Laws of England, Vol. 1(1), 4th Edn, states as under:

"85. ... Thus a presumption that natural justice must be observed will arise more readily where there is an express duty to decide only after conducting a hearing or inquiry or where the decision is one entailing the determination of disputed questions of law and fact. Prima facie, moreover, a duty to act in accordance with natural justice will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where that status is not merely terminable at pleasure, or to deprive a person of liberty or property rights or another legitimate interest or expectation, or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation so to act. Where a discretionary power to encroach upon individual rights is exercise, factors to be taken into account in deciding what fairness requires in the exercise of the power include the nature of the interests to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any involved. The content of the duty to act fairly will normally be very limited where the authority is in the course of exercising a function not culminating in a binding decision, but that may not be the case if the wording of the grant of powers or the context indicates that a fair hearing ought to be extended to persons likely to be prejudicially affected by an investigation or recommendation."

On Audi alteram partem that – "The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of the discretionary

decision on the interests of an individual may suffice in itself to attract in implied duty to comply with this rule."

(iv) Hon'ble Court propounded that:

Bias can be classified under three different heads:

(a) *a legal interests which mean that the Judge is "in such a position that a bias must be assumed."*

(b) *Pecuniary interest*

(c) *Personal bias.*

(v) To explain what constitutes bias" Hon'ble Apex Court referred to the following:

J.F. Garner's Administrative Law, which states as under:

"The natural justice 'bias' rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision-maker then that decision can be challenged. It is a matter of the courts ensuring that 'justice is seen to be done'. Since successful challenge is based on appearances, it is natural that the types of matter to which the rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not generally more widely to administrative decision-making and actions."

Metropolitan Properties Co.(FGC) Ltd. v. Lannon 1968 3 All ER 304, where

Lord Denning MR observed: (p. 310)

"[I]n considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does it, his decision cannot stand."

De Smith in his Administrative and Constitutional Law has observed:

"If the main functions of a tribunal are to determine disputed questions of law and fact, and to exercise discretionary powers by reference to standards that are not self-created but explicitly prescribed by statutory or other rules, on the basis of evidence openly tendered, and if, moreover, the abdicators can normally be expected to preserve a detached attitude towards the parties and issues before them, then a 'departure from the standard of even-handed justice which the law requires from those who occupy

(i) The complainant is ASPO (HQ) Midnapore Divisional Office, namely S.K. Hazra while the Disciplinary Authority is ASPO, Kharagpur Sub Division, namely Aniruddha Biswas. Therefore it is not a case where complainant has himself inflicted the punishment.

(ii) The respondents have failed to justify legality of withdrawal of the first charge sheet and issuance of a second one. Ratio of Monjit Singh (supra) does not squarely fit in to the present factual matrix. However, applicant has also failed to countenance with sufficient force that issuance of a second chargesheet withdrawing the first was not tenable.

(iii) The ASPO, KGP Sub Division is admittedly the one who has witnessed the incident complained of and has himself punished the applicant as his Disciplinary Authority.

In view of the legal maxim *Nemo debet in causa sua*, being a judge in his own cause there shall always be a "real likelihood of bias" in the "right minded reasons", even if he was impartial. Whatever his conclusions be, they are found to fall flat on that ground. In all fairness he ought not to have acted as a disciplinary authority.

15. In the aforesaid backdrop, we quash both the Penalty Order as well as the Appellate Order with liberty to the respondents to act and issue orders in accordance with law. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh