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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1136 of 1987

Vinod Behari Srivastava, Applicant
Versus
Union of India and Others Respondents

CORAM:

Hon'ble Justice U.C. Srivastava, V.C

Hon'ble Mr. K. Obayya, Member(A)

The applicant who was Upper Division Clerk in the Income Tax Department, Kanpur has challenged the order of dismissal dated 8.11.85 passed by the Income Tax Commissioner and the appellate order passed by Central Board dated 31.8.85 by which the appeal has been dismissed. In substance his case has been it is because of the trade union activities and the internal attitude of some officers, this action has been taken. According to the respondents, the applicant was a trade union leader has been enjoying the facilities as his aim was either not/attend the office or used to dominate everyone and he cannot escape from disciplinary action if the situation for the same called for which has actually been done.

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2. While according to the applicant, the proceedings and action against him was malafide and was a case of victimisation and the proceedings against him were violative of the principles of natural justice and it is a bias which ^{ed} prevail/against him as a result of bias, the action has been taken against him. The applicant was appointed in the Department in the year 1974. He has been the Office bearer of the trade union of the employees. Earlier, he was joint secretary of the Income Tax employees Association and in the year 1977 he became its General ⁱⁿ Secretary. According to the applicant/his capacity as Joint Secretary and General Secretary and then as Vice President, he directly came in contact of the officers and as they were biased and prejudiced against him and tried their best to harm him as far as possible. Earlier the applicant was working under Sri B. Gupta, who was holding the office of Commissioner of Income Tax from February 1979 to May 1981. According to the applicant who was ~~the~~ then General Secretary of the Income Tax Employees Union he used to visit and represent the grievances of the employees and there was no deterioration of discipline during his regime and it is said that he allowed the applicant even to come late or directed the office not to be particular regarding his attendance. The applicant attended the office and he was marked absent on 11.3.81

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for 26 dates upto 29.9.81 on various dates.

3. According to the Department, he did not come at all to the office and remained absent without leave between 9.2.81 to 26.3.82. It is also true that the entire period of 1981 passed and after 26th March, 1982 till then no action what so ever was taken against the applicant for coming late and not coming to the office without any application and rather it was either overlooked or condoned and may it beso, that the relation between the employer and the employee, may be homogeneous. After his exit one Sri S.P. Pandey who took over charge as Commissioner, Income Tax and the applicant's case is that he was so much biased and prejudiced against him and that he originated all action against him and took the matter in his hand to oust the applicant from the Department. In this connection, from the record it appears, as has been admitted by Sri B. Gupta, the then Commissioner Income Tax that there was some difference between the applicant and Sri S.P. Pandey in the matter of some transfer and the applicant in the capacity of General Secretary of the Association has sent telegrams against Sri S.P. Pandey which were not liked by him and it is said that he also wrote to

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the Board for derecognition of the Association in which there was great resistance from the side of the Association of the applicant which was not liked by Sri S.P. Pandey and a prayer was made for summoning the said file but the Enquiry Officer rejected the said prayer. The applicant as General Secretary of the Union raised certain demands on behalf of the employees from the said Sri S.P. Pandey, Commissioner Income Tax.

4. From the case of the respondents themselves it appears that the said Sri S.P. Pandey took upon his head to take action what ever possible against the applicant and with a pre-determination the proceedings against the applicant started. It has been stated in the Counter affidavit that "Sri B. Gupta's time, for reasons best known to him Sri Vinod Behari Srivastava, the applicant had became the uncrowned king of Central Revenue Building at Kanpur. No action was taken against his activities what so ever prejudicial they may be to the interest of the discipline in the building, the result was that his behaviour deteriorated considerably during that regime.... It fell to the lot of Sri S.P. Pandey, who was a man of high principles and

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he could not tolerate the continuation of indiscipline in the office. A time had come when the applicant became a terror to the officers and staff and his dictates used to prevail in the office which obviously could not be tolerated by Sri S.P. Pandey who was a bold officer with high sense of integrity and discipline. It was Sri S.P. Pandey, who had the guts and under him the officers who were then working who took up the courage to deal with the man like the applicant who used to threaten, browbeat and even sometimes show arms to the officers. The 'applicant' and the word 'Indiscipline' in Kanpur Income Tax Office had become synonymous in those days and, therefore, it is to the credit of Sri S.P. Pandey, the then Commissioner Income Tax Kanpur who faced his wrath but still had the courage of conviction to deal with the applicant. It is good for the department particularly, Income Tax Office at Kanpur that it had the officers of the calibre of Sri S.P. Pandey to deal with the applicant otherwise, it is clear that by now, with the continuance of the applicant, the Income Tax Office would have been rendered a big jungle without any authority, discipline and decorum?

5. Now it is thus clear that the said Sri S.P. Pandey had taken the matter in his own

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hand against the applicant and on behalf of the applicant it has been pleaded and contended that it is ~~xx xxxxx~~ because of the prejudice and bias which is an admitted fact against him that he tried to harm as much harm could be possible. First a Memorandum was issued to the applicant by Sri S.P. Pandey, Commissioner Income Tax calling for him to explain some charges against him in respect of the act of the applicant which dealt with the particular officer. The applicant wanted to inspect the documents and moved an application in his behalf and also prayed for certain certified copies of the application but the said application was rejected. According to the applicant, he gave a reply and requested that he was entitled for the information and the documents prayed for, but this prayer was also rejected. On 10.1.82 a suspension order was passed by Sri S.P. Pandey, Commissioner Income Tax and not by the Inspector of Income Tax who is ~~not~~ the Competent Authority and it appears that this was realised that it was an illegal order and that is why the applicant was reinstated. While according to the respondents that this order was recalled on the ground that the other members of the Association gave an assurance that the applicant will not misbehave in future and that is why the said order was recalled.

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6. It is to be noticed that although the charge-sheet was given to the applicant in respect of certain acts of omission and commission but even at that time those charge-sheets were given to him in respect to his late coming to the office and absence on various dates which seems has not been done in respect to the office bearers of the employees who even according to the department were given the lenient attitude as he dealt with the matters of the employees. A charge-sheet was issued to the applicant on 20.10.82 containing three charges which was denied by the applicant. It was thereafter the prosecution witnesses were examined and none of the witnesses supported the charges framed against him, as such no orders were passed on the said charge-sheet dated 20.10.82 and the matter was dropped. It is to be noticed that although the charge sheet was issued to the applicant on 20.10.82 and no charge-sheet was issued to the applicant in respect of the alleged absence or late coming for which the department itself has said that of course certain privileges have been given from the previous period though it has not said this privilege be enjoyed by the other earlier office bearers of the association also. Soon thereafter,

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a second charge-sheet was issued to the applicant on 24.11.82 consisting of eight charges issued by the said Sri S.P. Pandey and this time charges were in respect of his late coming and absence and putting his signature over the cross mark of the attendance register and thereby tampering the government record. The charges were against the threatening of officers and holding demonstrations. The charges were issued by Sri S.P. Pandey and the said S.P. Pandey was appointed as Disciplinary Authority by the Central Board of Taxes.

7. The said Sri S.P. Pandey appointed I.R.S., Commissioner of Income-tax Sri R. Jha as Enquiry Officer to conduct the enquiry. The applicant denied the charges and submitted his reply on 3.12.82 and submitted an application on 14.3.83 praying for the list of documents which were to be summoned. The applicant demanded/nominated Sri R.K. Misra, ~~Ex-Officio~~ as his defence counsel. The enquiry proceedings started on 26.2.83 and when his defence counsel asked to submit a list of documents which were to be examined. The applicant received a reply that the documents item no. 9, 12, 15, 17 were not considered relevant by the Enquiry Officer and on 7.7.83 he received another letter from the Enquiry Officer regarding the details of documents which are available and which are not available

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for inspection and he was asked to inspect the documents on 26.7.83. According to the applicant, the Enquiry Officer who was appointed by Sri S.P. Pandey who was seriously biased and bent upon to harm the applicant chose Sri R. Jha who was a subordinate ~~and~~ ^{and} who was also working at Kanpur office ~~was~~ ^{and} himself aware of the various things made deliberately as Enquiry Officer. The Enquiry officer was biased against him and has expressed that he will punish the applicant and because of certain action on the same line, the applicant moved a n application on 27.7.83 for changing the Enquiry officer. In his application to the Enquiry Officer the applicant assigned certain reasons as he does not expect a ny justice from him and the grounds in this behalf stated by the respondents (i) told Sri Bhaiyaji Gupta, who was Commissioner of Income Tax during the relevant period and in his examination he had orally told the Inspecting Assistant Commissioner Kanpur that he will be against the applicant; (ii) during the enquiry he loses his balance and every now and then he scolds the applicant whenever a request for adjournment is made and adjournment made by him which annoys him and whenever the department makes a prayer for adjournment it is granted; (iii) that he had talked ^{to} him in the room of Sri S.P. Pandey and he came out of his room

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murmuring although the applicant has gone to his room at the instance of the said Sri S.P. Pandey who was talking with him which indicates that he was against him. He further made a request for inspection of certain documents in defence but without assigning any reasons his prayer was rejected. An another application in this behalf was given on which no action was taken and in this way it appears clear that he is partial and will not do justice to him. The prayer for changing the Enquiry Officer was rejected and communication in this behalf was given to the applicant on 29.11.1983.

8. The applicant filed a representation regarding alleged bias of the Enquiry Officer on 27.7.83 to which he received a reply . The only thing which the letter states is that "the Directorate is of the view that the representation dated 27.7.83 deserves to be rejected". No decision of the Board was intimated to him as to whether Board has considered the matter and had given any decision of its own. The recommendations of the Director of Inspection(Vig) could not have been called the decision of the Board as the recommendation howsoever strong or binding it may be, it cannot take the place of the decision. As the matter was pending decision with the Board and whatever was

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communicated deserved to be reviewed, the applicant submitted another application on the following grounds :-

- (i) That the actions of the Enquiry officer are actuated by extraneous and collateral considerations with the biased mind. This is evident from the facts and circumstances as already intimated in the telegram dated 7.1.1984 and as stated hereunder.
- (ii) The Enquiry Officer is adopting a procedure which is contrary to the Rules of Natural justice and against the Procedure laid down under CCS (CCA) Rules, 1965.
- (iii) The applicant is an Upper Division Clerk in the Income Tax Department. The Head of the Department is Commissioner of Income Tax. In this enquiry case, the Commissioner of Income Tax, being the Head of the Department is the complainant as well as one of the witnesses. Thus the enquiry has been purposely and deliberately entrusted to a person who himself is a Commissioner

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of Income Tax and has got his Head quarters at the same station i.e. he is office colleague of the complainant.

(iv) The accused Government Servant being a petty clerk had to deal in official capacity with the Commissioner of Income-tax as well as another Commissioner of Income-tax who is Enquiring Authority. Since his colleague of the senior rank is a complainant and the Enquiring Authority himself is junior and has got much longer stay at Kanpur in different capacities, the prejudice against the applicant is quite natural.

(v) In addition to the submissions made in the applicant's letter dated 27.7.83 a telegram dated 7.1.1984 and as stated in the foregoing paras, the applicant further submitted:

(a) that the enquiry officer has stated before several persons that he will hold the applicant guilty and teach him a lesson irrespective of the fact whether evidences tendered is for or against him. The Enquiry Officer

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has, thus, pre-judged issues which put his very livelihood at stake.

(b) In the Regional Council Meeting held on 9.2.1983, The Enquiry Officer during the course of discussion (over the inclusion of this item in Agenda) expressed a view that the applicant is guilty and that no discussion about withdrawal of charge-sheet be made. The participation of the Enquiry Officer in the JCM meeting and his above version itself shows the pre-judged and bias state of his mind even prior to recording the evidences of prosecution side.

(c) It is pertinent to point out here that the applicant is General Secretary of the Income Tax Employee's Association U.P., Kanpur and entire proceedings have been planned to curb his lawful union activities. The Enquiry Officer is prejudiced by the union activities of the accused government servant.

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The Enquiry Officer had taken keen interest in the last election of the Association and had also openly expressed his sympathy towards applicant's opponents. The applicant had complained this fact at the time of election and Enquiry Officer was advised not to interfere in the Election of the Group 'C' Association in the light of Board's instructions.

(d) The latest example of his biased mind can be judged from the fact that while recording the statement of a prosecution witness, he had recorded the statement contrary to the version of the witness. An application by that witness had already been filed before the Enquiry Officer to the effect that his statement has not been recorded on his version.

(e) It is also well known and evident that Enquiry Officer had worked at Kanpur in various capacities. During his period he had held prejudicial feelings against union activities led by the applicant.

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(f) By virtue of his (Enquiry Authority's) longer stay at this station, he has got very close relations with his colleagues and other senior officers. He has got influence over several subordinate staff members who have either worked under him at any point of time or who are working under him. He is, thus using his influence against the interest of the applicant and was recording the statements in the manner which was against the prescribed procedure and the principles of natural justice.

(g) Enquiry Officer is expected to look after the interest of delinquent official and not to support the prosecution side. Unfortunately, the applicant is being given a rough treatment and his genuine and lawful requests are being ignored in violation of set-up procedure. The accused government servant is being threatened with series of charge-sheets "one after another". Such an atmosphere has been created that the previous defence assistant of the accused government servant has left the proceedings and nobody at Kanpur is willing to come forward as his defence assistant because of

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fear and biased attitude of the Enquiry Officer. The applicant had to run up to Agra to get the services of a colleague government servant of Agra who too is being denied the legal approach and his normal right of defence with the result that on an occasion, he had to withdraw from the proceedings of that day under protest.

(h) The applicant does not at all expects fair trial from the present Enquiry Officer because firstly he is junior in rank to the rank of complainant who has appointed him as Enquiry Officer and secondly, he is not holding enquiry impartially with an open mind and has already expressed his opinion against accused government servant. It is amply clear that he is under the influence of his senior colleague (complainant) and other officers who are responsible for taking action against him and whom he intends to cross-examine.

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10. Ultimately the Board rejected the application dated 12.6.84 for changing the Enquiry Officer. The applicant appointed one Sri H.S. Dubey as defence counsel, as such he submitted an application on 19.12.1983 that in order to equip himself for cross examining the witnesses it is necessary to inspect the documents as such he requested the Disciplinary Authority to make the documents available to him for inspection. The applicant has narrated as to how the proceedings were taken and the witnesses were examined behind his back and the counsel was allowed to inspect the documents but not all documents. Though it is admitted the fact that subsequently certain documents were allowed to be inspected by the applicant but several material documents were not put up by the respondents for inspection by the applicant. The applicant's defence counsel filed an application on 7.1.84 requesting therein that all the prosecution witnesses may be summoned on a particular date and they should be examined on the same date and the same request was rejected by the Enquiry Officer. The copy of the statements of witnesses were given to him and he was allowed to cross-examine the witnesses. The applicant's grievance in respect of the enquiry which still survives is that his genuine request for the supply

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of the genuine documents was arbitrarily rejected by the Enquiry Officer. These documents were relevant and were asked for giving a suitable reply but he was not supplied these documents and his application dated 21.7.82 were returned to him even then he ~~xxx~~ submitted his reply and number of documents asked ^{though were} ~~xxx~~ supplied to him, but not all the documents. His genuine request for copies of documents were turned arbitrarily with the result that he was not given opportunity to defend himself.

11. According to him no prosecution witnesses supported the allegations made in the charge sheet but even the findings was to be recorded and the finding has been recorded. Even the inspection of documents was not allowed, his second defence assistant on 1.5.84 and 6.1.84 inspected the documents of sl. no. (1-10) and sl. no. 7 & 8 were not allowed to be inspected by the Enquiry Officer. When the applicant's counsel found that the respondents are bent upon to proceed with the enquiry without making access to the relevant documents to the applicant, it was realised that it would be futile to participate in such arbitrary and unreasonable enquiry. The Enquiry officer examined the witnesses behind the back of the applicant. Thereafter the applicant received an order dated 10.1.1984

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mentioning therein that the enquiry would be resumed on 14.1.1984 and ~~an~~ another order of the same date was also received from the Enquiry officer with the reference to the applicant's defence counsel's letter dated 7.1.84 regarding inspection of additional documents. In the said letter it was mentioned that the Enquiry Officer has requested the Commissioner, Income-tax, Kanpur to make available the documents mentioned therein for inspection. It was further pointed out that the applicant's defence counsel has to get the copies of statements of the witnesses and inspection of the remaining documents has also to be completed. The applicant's request for inspection of additional documents was also rejected. It is pertinent to mention that the request for inspection of additional documents also it was pointed out to the applicant that the inspection of documents is permissible on the basis of first request made by the applicant and so far as inspection of additional documents was concerned, the question had to be decided under Rule 14 of CCS(CGA) Rules, 1965 as the proceedings had to be conducted strictly in accordance with the said rule. This rule provides that opportunity in this respect is to be given once and only once for which strict stipulation regarding the time limit is prescribed under the said rule. It was pointed out that the said opportunity had already given to the defence and

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availed that taking a liberal view of inspection of additional documents was also being allowed. Copies of statements of witnesses taken after inspection of all the documents. The inspection of other documents which are not considered relevant were not allowed to be inspected such as confidential character roll and the absentee statement was also not allowed as the Commissioner Income-tax informed him that no such statement was maintained in this office.

12. Learned counsel for the applicant contended that the entire proceedings have been vitiated that the said Disciplinary Authority Sri S.P. Pandey was biased against him and the entire proceedings were taken because of his biased and pre-determined mind and the action so taken by him and even though the applicant moved an application for changing him but the same was not done. It is not necessary to detail more facts in this behalf as it appears that the said Sri S.P. Pandey was unfavourably disposed of towards the applicant and there was a move on his part from before to take action against the applicant or to get rid of him from the Department and infact it is he who has complained against him and yet he was appointed a Disciplinary Authority and as Disciplinary

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Authority he gave a choice for Enquiry Officer to hold enquiry against the applicant.

13. Facts of the case make it clear that Sri S.P. Pandey was biased against the applicant and had occasion to make complaint against the applicant and was fully ~~dis~~satisfied with his conduct and did not relish the act of his predecessor. He took the matter in his hand to deal with the applicant and the matter which was overlooked and when he got an opportunity even taking into consideration the previous matter which rather stood waived and condoned and made complaint and issued charge-sheet and subsequently the department appointed him as disciplinary authority as he had taken all these actions. As he had taken the cudgels in his hand as has been admitted by the respondents themselves and he was a 'biased' officer and in any case his action created a bonafide doubt that he was a 'biased' officer. Incase he would not have been transferred, he would have passed the order but he having been transferred the order has not been passed by him. As such the ~~plea~~ that Sri S.P. Pandey being a biased officer the entire enquiry proceedings are to be vitiated, as final orders were not passed by him although he was the witness and he was the person rather who was instrumental in collecting evidence and choosing a person of his choice or appearing as a witness or taking active interest by itself/not vitiate the enquiry as he did not pass the ~~final~~ order. The plea of the applicant for setting aside the impugned order ~~on~~ the ground of his 'bias' fails

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The applicant's application for changing of Enquiry Officer was wrongly rejected and said R. Jha was appointed as Enquiry Officer by the Commissioner Income-tax despite the facts, he was transferred to Bhopal even then the enquiry was entrusted to him. Facts of the case prove 'bias' of said Sri S.P. Pandey towards the applicant but subsequently he was transferred and the punishment order against the applicant was passed by another Disciplinary Authority not by Sri S.P. Pandey who was biased towards the applicant and rather had a mission in his mind but the enquiry cannot be said to be vitiated on this ground as well as his being a witness in the case or taking of active interest by him, the appointment of Enquiry officer by him would not vitiate the enquiry as such this plea of the applicant fails.

14. It was then contended that from the facts of the case it is evident that there was a move to victimise the applicant for trade union activities and that is why efforts were made to **haul** him up by levelling or making charges against him. The attempts of the respondents earlier failed as they had to draw the first charge sheet. After their failure in first attempt yet another attempt was made in this manner and the way in which the enquiry proceeded or thereafter that the applicant was victimised for his trade union activities. Whether a particular person has been victimised or not depends upon the ^{not} facts of the case. The word 'victimisation' is not capable of any precise definition as the same depends on the facts of the case.

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15. In a case of Workmen of M/s Williamson Magor and Co. Ltd Vs. M/s Williamson Magor and Co.

Ltd, A.I.R 1982(SC) page 78" the court accepted the interpretation of the word 'victimization' in the normal meaning of being the victim towards unfair and arbitrary action and in that case promotion of certain workmen was held to be effe-ctual victimisation of superseeded workmen.

16. In a case of Assam Oil Co. Ltd New Delhi Vs. Its Workmen, A.I.R 1960(SC) pg 1264 wherein it has been held that it is not open solely for the trade union, therefore the situation parti-cularly punishing him but will be the act of workmen. This consideration will be vitiated. In some cases the employer may disapprove of the trade union activities of his employee and may purport to discharge his services under the terms of the contract. In such cases, if it appears that the real reason and motive for discharging is the trade union activities of the employee that would be a case where the Industrial Tribunal can justly hold that the discharge is unjustified and has been made malafide. In the instant case, as we are deciding this case on some other ground it is not necessary for us to deal the question of victimisa-tion and it cannot be said that all action and even otherwise it cannot be said that the action which has been taken against the applicant is nothing but his victimisation because of his trade union activi-ties.

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17. On behalf of the applicant it was contended that principles of natural justice were offended in this case and more emphasis was laid on the question of plea of 'bias' which is a part of principle of natural justice as a biased decision offends the principle of natural justice. It was contended that he was fulfilling the task of Sri S.P. Pandey examination in chief ~~for~~ cross examination which reasonably made the applicant to believe the applicant's apprehension or suspicion but rather more or less that he proceeded as a 'biased' officer and rather adopted the attitude which could not be said to be fair.

18. In a case A.I.R 1988(SC) page 2232 'The Secretary to the Govt. Transport Department Madras Vs. Munnuswamy Mudaliar' and others where in it is held that for 'bias' it is not necessary that infact the bias is to be proved. In a case of 'Manak Lal Vs. Dr. Prem Chand, A.I.R 1957(SC) pg-425' in which the court observed that bias always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. 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. In the case 'Lord Denning M.R. in Metropolitan Properties Co. (E.G.C) Ltd. Vs. Lannon (1968) 3 WLR 694 at p. 707, it was observed that we should not, however,

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(2) be understood to deny that the court might with greater propriety apply" the reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings. As there was real likelihood of 'bias' in the sense explained above the enquiry and the orders based on the enquiry were bad.

19. In a case of 'Ranjit Thakur, appellant Vs. Union of India and others, respondents, A.I.R 1987(SC) pg 2386 wherein it has been held that the test of likelihood of 'bias' which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias infact existed. In the case of 'International Airport Authority Vs. K. Bali A.I.R 1980(SC) page 1099 again it was reiterated and reasonable apprehension of bias in the mind of the party. This was also reiterated in the case of Secretary to the Govt. Transport Department Madras Vs Munnuswamy Mudaliar(Supra) A.I.R 1968(SC) pg 2232.

20. In a case of 'State of UP Vs. Mohammed Nooh, A.I.R 1958(SC) 86 (45 C 13) makes it clear that if an enquiring officer adopts a procedure which is contrary to the rules of natural justice, the ultimate decision based on the report of the enquiry, wherein a departmental "trial" against a police constable, before a Deputy Supdt. of police to contradict the testimony of prosecution witness. The Dy. Supdt. of police who conducted the enquiry

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himself gave a testimony, there is a grievous violation of Natural justice. The act of presiding Officer in having his own testimony recorded evidence in the case a state of mind which clearly discloses considerable bias against the applicant. The continuance of enquiry by biased officer, ~~conting~~ to officiate as officer appointed to inquire was bad in law. The subsequent authorisation by Govt. by name did not validate the enquiry proceedings and the order of punishment passed on the basis of such inquiry was illegal, invalid and inoperative.

21. In a case 'S. Parthasarathi, appellant Vs. State of Andhra Pradesh respondents', AIR 1973 (SC) 2701, wherein the Hon'ble Supreme Court has discussed as to what was meant by the word ^{real} likelihood of bias¹ and the court held that it means a substantial ~~if~~ possibility of bias, the court will have to judge ~~of~~ the matter as a reasonable man would judge of any matter ~~in the~~ ~~/conduct~~ of his own business. The real likelihood of bias is different from reasonable suspicion, the Supreme Court has followed it in the case 'R. Camborne (1955) 1 QB 41 and Metropolitan Properties Co(FGC) Ltd. Vs. Lannon(1968) 3 WLR 694'. It was held that "there must exist circumstances from which reasonable men would think it probable or likely that the enquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. In a case Shri Balwant Rai Mahajan Vs. Shri V.P. Khosla, 1979(1) SLR pg 391 it was held that the reasonable basis for apprehension that the Enquiry officer was biased.

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22. So far the Enquiry officer R. Jha is concerned, he was in the Department from before and it cannot be said that nothing was in his knowledge and will not lie to enter into the question regarding the order passed by him in this connection on behalf of the applicant. It has been pointed out that he ignored various pleas taken by the applicant and various omissions and commissions and proceeded to decide the case in favour of one party and went to the extent of disbelieving even the supervisor under whom he worked or Commissioner of Income-tax Sri B. Gupta under whom he had occasion to work without entering into the question as to what was the prevailing circumstances in the past and present and whether everything was in writing or not. He even did not take into consideration the various pleas and the omissions and commissions pointed out which had been pleaded and the subsequent matter which could have ~~ever~~ been taken into account were ~~glossed~~ / It appears he was specially chosen as the Enquiry officer; the applicant moved an application against the biased officer more than once but even then no action was taken. The applicant gave number of instances regarding alleged bias of said R. Jha. The said R. Jha himself did not give any reply to the applicant's letter and has not come forward to deny the allegation -s made ~~against~~ him in this application. It was contended that he was fulfilling the task of Sri S.P. Pandey, his senior colleague who was appointed him

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as Enquiry Officer and he examined the said Sri Pandey as court witness and ^{he} himself first asked the question from the said Sri S.P. Pandey who got his report proved so as to enable him to refer the reports every now and then at the stage of cross-examination. Even if it could be said that his actions fell short of conclusive proof of 'bias' but his actions referred to above were such which reasonably could have made applicant to believe that he was a 'biased' officer. It is a case of not only mere suspicion but something more/than that as observed by us.

23. The applicant has got reasonable apprehension that he will not get justice from the Enquiry Officer ~~who~~ should have been changed. The applicant moved application for changing the Enquiry officer as he having reasonable apprehension that he will not get justice from the Enquiry officer as his plea has been rejected but after transfer of Sri R. Jha to Bhopal rather no justification that the enquiry be concluded by him at Bhopal even though it may be in the last stage. When Sri R. Jha was appointed by designation somebody else as his successor would have been appointed as Enquiry officer who would have ~~xxxx~~ concluded the enquiry but even then the Disciplinary Authority preferred to allow the said R. Jha to continue to work as Enquiry Officer., strengthening the applicant's belief that the Enquiry officer is a 'biased' officer and he would not expect any justice from him.

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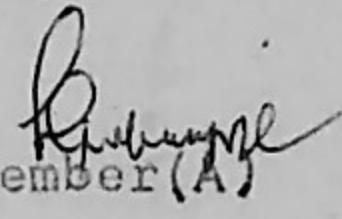
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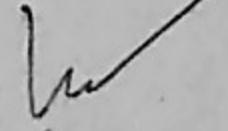
Even if the said officer was biased and the applicant had reasonable belief and the facts also show that his belief was ~~xxx~~ based on certain facts. The conduct of proceedings by R. Jha upto this stage he was not transferred to Bhopal cannot be said to have vitiated on this ground, as there is no such flaw in the proceedings till that stage. There appears no such flaw in the proceedings at this stage which may call for interference in the proceedings on this ground. Even if some thing more remained or something more could have been done the applicant could have **been** given still more opportunity would not be a ground for setting aside the enquiry proceedings on the ground of 'bias'. After the transfer of R. Jha to Bhopal the transfer of proceedings to him cannot stand as enquiry could not have been referred to him and the reference of enquiry vitiates the enquiry on the ground of 'bias'. With the result that the enquiry proceedings which took place at Bhopal and the orders thereafter are vitiated and cannot be allowed to stand but this does not mean that if there is ~~really~~ a charge of indiscipline, the indiscipline be allowed to ~~perpetrate~~ ~~the~~ or ^{to} ~~unchecked~~. Although we are quashing the dismissal order and the appellate order but the enquiry proceedings will be deemed to be still pending and the disciplinary authority can appoint the Enquiry Officer to conclude the proceedings from this stage before his

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transfer to Bhopal and something further is for him to decide. Accordingly, the dismissal order dated 8.11.85 and the appellate order dated 31.8.87 are hereby quashed. However, the Disciplinary Authority can appoint any Competent officer as Enquiry Officer ~~including one who is holding the charge of the office which was earlier held by Smt. A. J. who~~ will there after conclude the enquiry in accordance with law as we are allowing this application to this extent, it is not necessary to enter into the other pleas taken by the applicant including the denial of reasonable opportunity to defend himself and not allowing to inspect certain relevant documents and conducting the ex parte proceedings and non production of certain relevant documents including the attendance register, these are the matters to be looked into by the Enquiry officer. No order to the costs.


Member (A)


Vice Chairman

Dated: 4th March 1993.

(Uv)