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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.51/2011

Jodhpur, this the 03rd day of January, 2013

CORAM

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.

Mustak S/o Shri Habib, aged about 51 years, R/o Quarter No.T/14, Power House, Railway Station Marwar Mathania, NWR, at present employed on the post of Pump Driver cum Wireman at Railway Station Marwar Mathania, NWR.

: Applicant

(Through Shri J.K.Mishra, Advocate)

Versus

1. Union of India through General Manager, North-Western Railway Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
2. Senior Division Electrical Engineer, NWR, Jodhpur Division, Jodhpur.
3. Shri Anil Ram Dev, Sr. Section Engineer, Office of the Asstt. Divisional Electrical Engineer, NWR, Jodhpur Division, Jodhpur.

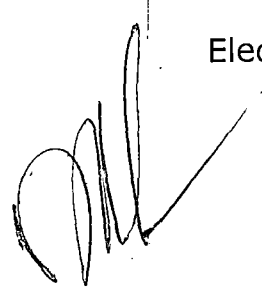
.....Respondents

(Through Shri Vinay Jain, Advocate)

ORDER (ORAL)

Per Hon'ble Mr. BK Sinha, Administrative Member

The instant OA is directed against the charge sheet dated 05.10.2010 [A-1] and the order/NIP dated 04.01.2011 [A-2] imposing the penalty of withholding of next increments for three years w/o future effect passed by 3rd respondent, Shri Anil Ram Dev, Sr. Section Engineer, Office of the Asstt. Divisional Electrical Engineer, NWR, Jodhpur Division, Jodhpur.



Relief(s) sought

2. The applicant has sought the following relief(s):

"(i) That impugned charge sheet dated 05.10.2010 (Annexure-A-1) and NIP dated 04.01.2011 (Annexure-A/2), imposing the penalty of withholding of next increments for three years w/o future effect passed by 3rd respondent may be declared illegal, tainted with malice of 3rd respondent and the same may be quashed and the applicant allowed all consequential benefits as if the impugned orders were never in existence.

(ii) That the respondents may be directed to produce the relevant records/case file of disciplinary proceedings/ file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts.

(iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iv) That the costs of this application may be awarded."

Case of the applicant

3. The applicant was posted as Pump Driver cum Wireman at Railway Station, Marwar Mathania, NWR, wherein he was issued a charge Memo/charge sheet on 05.08.2010 [A-1], on the charges of availing rest together and abusing the respondent No.3, Shri Anil Ram Dev, Sr. Section Engineer, Office of the Asstt. Divisional Electrical Engineer, NWR, Jodhpur Division, Jodhpur and vide communication/order dated 04.01.2011, penalty was imposed upon him [A-2]. The applicant submitted his defence statement vide his communication dated 05.1.2010 wherein he denied the charges and has accused the respondent No.3 of having used abusing language towards him. The applicant submitted in his OA that the respondent No.3 was figured as a witness and has also acted as a Disciplinary

Authority and has imposed a penalty upon him, one cannot be judge in a penalty against him [para 8; page 5 of the OA].

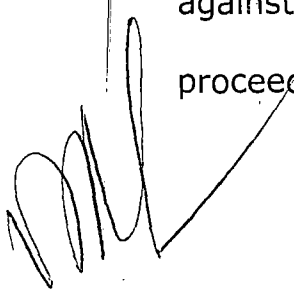
Stand of the respondents

5. The respondents have contested the OA through their written statement asserting that the applicant misbehaved with the respondent No.3 for which he has been rightly charge sheeted and a speaking order has been passed against him. The applicant is within the administrative control of the respondent No.3 and he has the authority to take the disciplinary action against any employee for any misconduct or behaviour.

6. In his rejoinder application, the applicant has asserted that the Rules of Natural Justice and the very basic principles of law have been disregarded. The respondent No.3 was not competent to act as Disciplinary Authority and hence the impugned order is void ab initio and non-est, it cannot be legalized by a subsequent order passed by the superior authority. However, the learned counsel for the respondents vehemently argued against the applicant on account of his indisciplined conduct.

Facts-in-issue

7. The only issue to be considered here is that whether the respondent No.3 was competent to have passed the orders against the applicant and whether on this account the proceedings have been rendered void ab initio. In this regard,



the term Disciplinary Authority has been defined under Clause (i) to mean:

"(i). In relation to the imposition of a penalty on a railway servant, the authority competent, under these rules, to impose on him that penalty (means the competent authority to impose the penalty as per schedule in normal course and in case of imposing major penalties such authority would be Appointing authority).

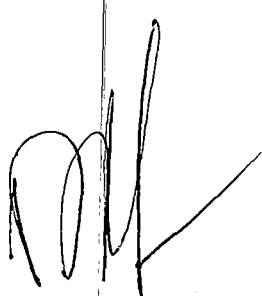
8. However, the power to impose penalty is subject to the general principles of law, *Nemo Judex in Causa Sua*, which literally means that no one should be a judge in his own cause. It is a principle of natural justice that no person can judge a case in which he has an interest. This Rule is to be very strictly applied to any appearance of a possible bias even if there is actually none; **"Justice must not only be done, but must be seen to be done."** The Hon'ble Supreme Court in Justice **P.D. Dinakaran Vs Hon'ble Judges Inquiry Committee and others**, in Writ Petition (Civil) No.217 of 2011 has held:-

"23. The traditional English Law recognised the following two principles of natural justice:

(a) "Nemo debet esse judex in propria causa: No man shall be a judge in his own cause, or no man can act as both at the one and the same time - a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and

(b) Audi alteram partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

However, over the years, the Courts through out the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions /decisions. At the same time, the Courts have repeatedly emphasized that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions, if any, applicable, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice."



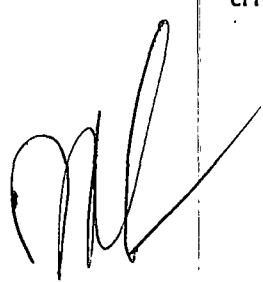
9. In the ***Union of India vs. P.K. Roy***, AIR 1968 SC 850, it has been held by the Hon'ble Supreme Court :

"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

10. In the case of P.D. Dinakaran (Supra), the Hon'ble Supreme Court has further held :

"25. In this case, we are concerned with the application of first of the two principles of natural justice recognized by the traditional English Law, i.e., Nemo debet esse judex in propria causa. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decisionmaking. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially."

11. In view of the afore decision of the Hon'ble Supreme Court and the well recognized and well followed principles of law, it is asserted that not only the principle of *Nemo debet esse judex in propria causa* is to be implemented but the Courts/Tribunals should have a zero tolerance to deviation from such cases. In the facts of the instant case as stated, I find these principles



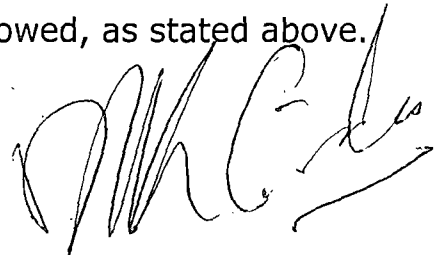
have been clearly violated. As such, this Tribunal has no option save to ;

(i) Impugned charge sheet dated 05.10.2010 [A-1] and NIP dated 04.01.2011 [A-2] is held void ab initio and is therefore quashed.

(ii) I find that the applicant have come to this Tribunal without having recourse to appeal as provided. Hence, the respondents free to act under law.

(iii) There shall be no order as to costs.

12. Accordingly, the OA is partly allowed, as stated above.



[B.K.Sinha]
Administrative Member