CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. No. 260007022014
Cuttack, this the 22nd day of June, 2017

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

…….

Surendra Nath Panda, aged about 57 years, Son of Late Raghunath Panda, working as Station Superintendent, Therubali Railway Station, At/Po-Therubali, Dist-Rayagada, presently residing at T/II/2/B, Railway Colony, At/PO-Therubali, Dist-Rayagada, PIN-765018.

…Applicant

(By the Advocate-M/s. S Patra-I, D.D. Sahu, S. Rath)

-VERSUS-

Union of India Represented through

1. General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751017.
2. Additional Divisional Railway Manager, East Coast Railway, Sambalpur, Po-Modipara, Dist-Sambalpur-768002.
3. Sr. Divisional Operations Manager, East Coast Railway, Sambalpur, Po-Modipara, Dist-Sambalpur-768002.
4. Divisional Operations Manager(G), East Coast Railway, Sambalpur, Po-Modipara, Dist-Sambalpur-768002.

…Respondents

By the Advocate- (Mr. S. K. Ojha)

ORDER (Oral)

R. C. MISRA, MEMBER (A):

This O.A. has been filed by the applicant Challenging the Charge Memorandum dated 08.04.2014 (Annexure-A/1) on the ground that such order is passed without appropriate jurisdiction and same being bad and illegal. Moreover, the disciplinary proceeding carried out with respect to Charge Memorandum under Annexure-A/1 is in violation of Discipline and Appeal Rules and Circulars prescribed by the Railway Board as well as settled principles of law.

2. The facts of the case are that the applicant was initially appointed in the Indian Railways as Assistant Station Master in the year 1984. He was promoted as Station Master in the year 1987 and Dy. Station Superintendent in 1999. Thereafter he was promoted as Statin superintendent in the year 2006 with

implementation of restructuring promotion with effect from 2003. Presently, the applicant is working as Station Superintendent at Therubali Railway Station under Sambalpur Division of East Coast Railway. In the meantime, the respondent No. 3 issued a major penalty Charge Memorandum dated 08.04.2014 (Annexure-A/1) against the applicant in the capacity of Disciplinary Authority (DA) and called for his written statement of defense. Under Annexure-III of the Charge Memorandum an inspection report conducted on 18.12.2013 (Annexure-A/2) by the Respondent No. 3 himself has been enclosed as a relied upon document to sustain the charges framed against the applicant. Ld. Counsel submitted that before submitting the written statement of defense to the Charge Memorandum under Annexure A-1, the applicant submitted a representation dated 13.04.2014 (Annexure A/3) before the Respondent No. 3, thereby requesting him to withdraw the Charge Memorandum as it was issued by the same authority whose inspection report was relied upon to frame the charges. In the representation under Annexure A/3 the applicant tried to draw the attention of the Respondent No. 3 towards the provisions under Para 19 (Viii) of the Master Circular (MC) No. 66 and Para 2 (e) of the MC No. 67 issued by the Railway Board wherein it has been stipulated that if DA of a charged official is involved in the same case then he should not act as Disciplinary Authority and the authority who is next higher in hierarchy should act as DA. Furthermore, according to the provisions specified under para 19(vii) of the MC No. 66 and para 2(g) of the MC No. 67, authority who has acted as a member or Chairman of a fact finding inquiry should not act as a DA as the charged employee would apprehend that the officer having expressed an earlier opinion would not, as a DA, depart from his own earlier finding, which may deprive the charged Officer (CO) from getting justice. The representation under

Annexure A/3 was placed before the respondent No. 2 by the Respondent No. 3 for necessary decision. The Respondent No. 2 rejected the contentions of the applicant and upheld the authority of Respondent No. 3 as DA. The said decision of the Respondent No.2 was communicated to the applicant by the Respondent No.3 vide his letter dated 18.06.2014 (Annexure-A/6) and the applicant was instructed to submit his written statement of defense before the Respondent No. 3.Thereafter**,** the applicant again submitted a representation dated 28.06.2014 (Annexure-A/7) before the Respondent No.3 seeking his attention towards the provision under Rule 30 of Railway Servants (Discipline &Appeal) Rules, 1968, which authorizes only the Hon'ble President on behalf of the Railway administration for interpretation of disciplinary rules and instruction, in case of emergence of any doubt. Consultation with any official superior(s) or other institution(s) which is not authorized under law to be a part of such consultations is not permitted under Railway disciplinary Rules. Placing of the representation under Annexure A/3 before the Respondent No. 2 by the Respondent No. 3 was unlawful. Through the representation dated 28.06.2014, the applicant requested the Respondent No. 3 to forward the matter to the Hon'ble President through the Railway Board for proper interpretation as a doubt relating to the applicability of certain disciplinary instruction has arisen between the delinquent employee (applicant) and the DA. It was also categorically stated that the Respondent No. 3 has acted as a reporting authority or witness to the case as the above referred inspection was conducted and submitted by him, and hence, as a DA, he cannot judge his own inspection report which is a relied upon document in the Charge Memorandum. Thesaid representation under Annexure A-7 was rejected by the

Respondent No. 4 vide his letter dated 19.08.2014 and again the applicant was instructed to submit his statement of defense against the Charge Memorandum under Annexure A/1. It is pertinent to mention here that though the applicant has requested vide his representation under annexure A/7 to provide a copy of orders, if any available, wherein the power to interpret such provisions have been delegated to the officials of the rank of Respondent No. 2, but no such document was provided by the Respondent No. 4 along with letter dated 19.08.2014. Under the provisions of Railway Servants (Discipline & Appeal) Rules, 1968, the Respondent No. 2 has no authority to pitch in at current stage to take any decision on the ongoing quasi-judicial disciplinary proceedings against the applicant. Ld. Counsel submits that disposal of representation under Annexure A/7 submitted on behalf of the applicant by the Respondent No. 4 and calling for statement of defense is again an act without jurisdiction as the Respondent No.4 is a lower authority working under the DA i.e. Respondent No. 3, and is a Senior Scale Officer. As per Schedule of powers, an officer of the rank of Junior Administrative Grade and above can exercise disciplinary powers on the applicant and ask written statement of defense from him. It is also pertinent to mention that as per Railway Board's letter No. F(E) 60 SA1/1 dated 04.03.1963, reiterated vide para 2 (f) of MC No. 67, even the authority looking after the current duties of a post cannot exercise disciplinary functions assigned to the said post. Ld. Counsel further submits that there being no other speedy and efficacious remedy available, the applicant has approached this Tribunal by filing the present Original Application with the following prayers:-

> "(i) The Hon'ble Tribunal may be pleased to quash the Charge memorandum dated 08.04.2014 under Annexure-A/1 after declaring it as illegal;

(ii) and be further pleased to quash the order dated 18.06.2014 under Annexure-A/6, order dated 19.08.2014 under Annexure-A/8 and all further proceedings commencing with the issue of Charge memorandum under Annexure-A/1, after declaring those as illegal.

(iii) and pass any other order(s)/direction(s) as deemed fit and proper in the bonafide interest of justice."

3. The Respondents by filing the counter submitted that while considering the matter on the question of admission, this Tribunal vide order dated 22.09.2014 has been pleased to issue notices to the Respondents to file their counter in the matter and further be pleased to direct the Administration not to proceed with the proceeding without leave of this Tribunal. It is needless to indicate here that the order of this Tribunal has been respected and the proceeding has been abandoned for the time being awaiting further orders from this Tribunal. Ld. ACGSC for the Respondents submitted that the was issued with a major penalty charge sheet vide No. Optns/SBP/D&A/SNP/THV/14 dated 08.04.2014 basing on the inspection report dated 18.12.2013 of Sr. DOM/SBP.The above charge sheet was received by the applicant on 11.04.2014 who submitted a representation dated 13.04.2014 before the Disciplinary Authority in which he has requested to withdraw the charge memorandum as it was issued by the same authority whose inspection report was relied upon to frame the charges. It is further submission of Ld. ACGSC that the representation dated 13.04.2014 of the charged official was referred to ADRM/SBP as it was appropriate for Appellate Authority in this case to take decision on the issue. The decision of the ADRM/SBP was communicated to the Charged official vide office letter No. Sr. DOM/SBP/SNP/SMR/THV/14/18, dated 18.06.2014 by the Disciplinary Authority. Thereafter, on receipt of clarification with regard to representation dated 13.04.2014, the charged official again submitted a representation dated

28.06.2014 before the Disciplinary Authority in which he has requested to forward the matter to the Hon'ble President of India through Railway Board for decision on the issue related to this case. The representation dated 28.06.2014 was not considered by Disciplinary Authority to forward the case to the President of India as all the available channels of representation under D & AR have not been exhausted.The decision given by Disciplinary Authority in writing against the representation dated 28.06.2014 was communicated by the DOM (G)/SBP vide this office letter No. Optns/SBP/D&A/SNP/SMR/THV/14., dated 19.08.2014. It is further submission of Ld. ACGSC is that as the preliminary objection in absence of any such plea that the Charge sheet has been issued by any incompetent authority or it is vague or inordinately delayed, little scope is available for judicial interference. The Hon'ble Apex Counter in the case of Ministry of Defense–Vrs-Prabas Chara Mirdha and Anata R. Kulkarni Vrs- Y.P. Education Society & Ors has laid down the law to that effect restraining judicial interference in the initial stage of the proceeding. Further, the applicant failed to exhaust the departmental remedies available to him. If at all, the applicant was aggrieved by the order of the Disciplinary authority on rejection of his representation, there was a scope for him to approach the appellate authority to take a decision in the matter.

4. It is the further submission of the Ld. ACGSC is that the applicant was issued with a Major penalty charge sheet Vide No.Optns/SBP/D&A/SNP/SMR/THV/14 dated 08.04.2014 basing on the inspection report dated 18.12.2013 of Sr. DOM/SBP(Resp. No. 3). On receipt of charge memorandum, the applicant submitted a representation dated 13.04.2014 before the Disciplinary Authority (Resp. No. 3) in which the applicant has

requested to withdraw the charge memorandum as it was issued by same authority whose inspection report was relied upon to frame the charges. In reply to the representation dated 13.04.2014, it was informed to the applicant vide this office letter No. Sr. DOM/SBP/SNP/SMR/THV/14/18 dated 18.06.2014 that Disciplinary Authority i.e. Sr. DOM/SBP is the controlling Officer under whose administrative control the charged official is working. Sr. DOM/SBP (Disciplinary Authority) has the undisputed authority, right and jurisdiction to ensure proper and smooth functioning of sub-offices under his control. Being the Branch officer, he has every right to conduct inspection at any station in the divisions and initiate disciplinary proceedings against the staff working under him for committing irregularities. D&AR action taken in this case with Sr. DOM as Disciplinary Authority does not contravene Master Circular-67. It is further submitted that the Disciplinary Authority (Sr. DOM/SBP) has conducted surprise inspection at the station and highlighted the irregularities which were mentioned in the inspection note. Being the station manager in-charge of Therubali station, SMR is solely responsible for irregularities at the station. Further, the applicant is trying to mislead this Tribunal using the work “Fact finding inquiry” instead of “inspection”. Literal meaning of both the things having hell and heaven difference. The document so annexed to the OA itself shows that the surprise inspection has been made by the authority and he has prepared the report then and there in presence of the applicant. Therefore, merely because the Authority concerned has inspected and pointed out the discrepancies/faults in the report, same cannot take away the statutory right of a Disciplinary Authority. However, neither statute nor any other law prohibits the Respondent No.3 to be the

Disciplinary Authority merely because he has inspected the station nor prepared the report. It is further submitted that the Rly. Servants (Discipline & Appeal) Rules, 1968, has been framed in exercise of the power conferred by the proviso to article 309 of the constitutions on the President of India and thereby came into force from 1st Oct., 1968.Accordingly, under Rule-2 of the Rly. Servants (Discipline & Appeal) Rules, 1968, the Appointing Authority and Disciplinary Authority have been defined. In this case, the respondent No. 3 i.e. Sr. DOM is not only the controlling officer but also an Appointing Authority under whose administrative control the charged official woks Sr. DOM has right to conduct inspection all the stations under his jurisdiction to ensure proper and smooth functioning of sub-offices. Sr. DOM has pin-pointed irregularities in terms of inspection and intending to take corrective measures in terms of D&A action. In this case, Sr. DOM is the Competent Authority to initiate D&A proceedings within the definition of D&A Rules which are statutory in nature. Therefore no change in Disciplinary Authority can take place in this case. It is further submitted by the Ld. ACGSC that the Respondent No. 3 has taken a wise and appropriate decision referring the matter to the notice of the Respondent No. 2 (Appellate Authority). Since, the applicant disputed the authority of the Respondent No. 3, it was proper on the part of the Respondent No. 3 to refer the matter to the Respondent No. 2 and further action was taken only after decision was taken by the Respondent No. 2. The representation dated 13.904.2014 of the applicant was referred to ADRM/SBP as it was (Respondent No. 2) appropriate for Appellate Authority in this case to take decision on the issue. The said decision of the (Respondent No. 2) ADRM/SBP was communicated to the applicant by the Disciplinary Authority

vide this office letter dated 18.06.2014 calling upon the applicant to submit his defense representation against the Charge Memorandum. It is the further submission of the Respondents that whatever decision is taken either by the Disciplinary or Appellate Authority are within the purview of the D&AR Rules, 1968. Since, the rule position is clear and unambiguous, question of interpretation of the same is not necessary. However, the intention of the applicant is clear in this regard as he is trying to avoid the proceedings in this way raising the vague plea. However, after receipt of clarification with regard to representation dated 13.04.2014 the charged official again submitted a representation dated 28.06.2014 before the Disciplinary authority in which he has requested to forward the matter to the Hon'ble President of India through Railway Board for decision on the issued related to this case. The representation dated 28.06.2014 was not considered by Disciplinary authority to forward to the President of India as all the available channels of representation under D&AR have not been exhausted. The decision taken by Disciplinary Authority against the representation dated 28.06.2015 was communicated vide letter dated 19.08.2014. The charged official is misleading the court by quoting wrong assumptions without going through the D&A Rules, 1968. Sr. DOM, being not only the Disciplinary Authority but also an Appointing Authority, has every right to conduct inspections and to take the staff to task for committing mistakes to give any punishment mentioned in D&AR Rules 1968.The issuing of charge sheet by reporting Authority or witness to the case was replied vide letter dated 18.06.2014 wherein his prayer was not admitted by the competent authority. The placing of representation before ADRM/SBP by the Disciplinary Authority was lawful as ADRM is the next higher Authority in

this case to take decision on the issue. It is further submitted that the representation dated 28.06.2014 was not rejected by DOM(g)/SBP(resp. No. 4). He has only communicated the decision of the Disciplinary Authority which was given in writing on Note Sheet side to the charged official vide this office letter dated 19.08.2014. The Respondent No. 4 has neither rejected the representation nor conveyed his own decision to the charged official in this case. It is submitted that the charge memorandum was issued by the competent authority i.e. Sr. DOM/SBP(Resp. No. 3). The decision given by Disciplinary Authority in writing at N/S-3 against representation dated 28.06.2014 was communicated by DOM(G)/SBP(Resp. N. 4) vide letter dated 19.08.2014 to the applicant which does not mean that the Respondent No. 4 has exercised disciplinary power as Disciplinary Authority in this case. The charged official has categorically mentioned that "As per schedule of power, and officer of the rank of Junior Administrative grade and above can exercise disciplinary powers on the applicant". It is clearly admitted and fully aware that Sr. DOM.

5. Before taking any such plea or stand in the OA neither has gone through the rule position nor settle laws governing the field. Further, his entire averments are based on the assumption which is apparent from the pleadings of the OA. Because of failure to appreciate the difference of "fact finding inquiry report" and "inspection report' the applicant has approached this Tribunal with some un-authenticated grounds. Further, in view of law that the issuance of Charge sheet has in no way infringed the right of the applicant and the correctness of the charges will be proved only after the proceedings is completed. Hence, the present attempt is only to escape himself from participation in proceedings to cover up

the mistake so committed. Moreover, the charged officials is avoiding the departmental proceedings and approached court of law only to linger the proceedings up to his retirement on superannuation on 30.06.2017.

6. In reply to the counter filed by the Respondents the Ld. Counsel for the applicant in the rejoinder submitted that the applicant craves leave of this Tribunal to make the following submissions by way of rejoinder to the counter filed on behalf of the respondents. At the outset, the Ld. Counsel for the applicant submits that the respondents in their counter have not stated anything regarding the violations of the principles of natural justice as alleged in the O.A. They have also maintained complete silence on the apprehension of bias expressed by the applicant against the Respondent No. 3 as Disciplinary Authority(DA) which will deprive him from a fair hearing and unbiased order. It is these violation of the rules of natural justice and other provisions of law as mentioned in the O.A which render the Charge Memorandum under Annexure-A/1 without jurisdiction and ab-initio void. The Ld. Counsel for the applicant submits that Preamble of the Constitution includes the words " Justice, Social, economic and political". It also states about equality of status and of opportunity. The Article 14, which strikes at the root of arbitrariness, embodies the principles of natural justice. So far as public servants like the applicant are concerned, the words "reasonable opportunity of being heard" in Article 311(2) of the Indian Constitution includes all the dimensions of principles of natural justice. That the concept of the rules of natural justice has been fairly defined through many judicial pronouncements and the law is well settled in this regard. Their aim is to secure ends of justice or in other words to prevent miscarriage of justice. The Hon'ble Supreme Court in the

case of Rattan Lal Sharma Versus Managing Committee, Dr. Hari Ram(Co-Education) Higher Secondary School and Ors. AIR 1993 SC 2155, whi8le dealing with this principle has held that the deciding authority must be impartial and without bias and no man shall be a judge in his own cause. Further the Hon'ble Apex Court has observed in the same case, " For appreciating a case of personal bias or bias to the subject matter the test is whether there was a real likelihood of bias even though such bias has not in fact taken place." The rules of natural justice are integral part of administrative law and they are of more importance in judicial and quasi judicial processes. The applicant has primarily challenged the jurisdiction of Respondent No. 3 to act as DA in view of his involvement in the case as an authority who has already expressed his opinion on the charges framed against the applicant in his inspection report under Annexure A/2. The preliminary objection by the Respondents is baseless and misleading. The quoted decisions of the Hon'ble Apex Court are indeed supporting the applicant' s case since the Charge Memorandum has been challenged having been issued by an incompetent authority. As regards the allegations of failure to exhaust departmental remedies, the respondents themselves have not stated as to under which provisions of law the applicant could have approached the Appellate Authority. On the contrary, according to Rule 17(ii) of the Railway Servants (Discipline & Appeal) Rules, 196, no appeal lies against any order of an interlocutory nature or of the nature of step-in-aid of the final disposal of the disciplinary proceeding. The order rejecting the representation submitted by the applicant was nothing but an order of the nature of step-in-aid to promote the final disposal of the proceedings.The respondents already declares the applicant as the

sole responsible officer for the alleged irregularities, though nothing has been proved yet. It itself shows the biased attitude of the Respondents towards the applicant. When such averments can be made before this Tribunal, the fairness with which the applicant will be treated by the respondents in the instant case can be easily imagined. Further in the same para it has been stated by the Respondents that there is hell and heaven difference between the literal meaning of "fact finding enquiry" and "inspection". The Ld. Counsel for the applicant submits that the so-called hell and heaven difference has not been clarified by the Respondents themselves. The applicant never tried to mislead this Tribunal. The intent of the applicant behind equalizing the term "fact finding enquiry" with "inspection" was to focus on the fact that in both the cases the authority conducting the enquiry or inspection express his/her opinion and give findings by way of a report. An inspection is broader in scope than a fact finding enquiry. Surprise inspections in public offices encompass almost everything relating to the functioning of such offices, whereas fact finding enquiry generally refers to the process of procuring and verifying facts behind any particular incident/situation/controversy. Literally, inspection also means careful examination or scrutiny, investigation or probe; etc. The Respondents have failed to appreciate the true spirit of the rule framed by the Railway Board wherein the authority who acted as a member or Chairman of a fact finding enquiry was restricted to act as DA. By own admission of the Respondents, the inspection report was prepared by the concerned authority in presence of the applicant. It establishes that Respondent No.3 is a witness in the case. The rules in the Master Circulars as referred under Annexures-A/4 & A/5, Article 311 (2) of the

Constitution and the rules of natural justice clearly prohibit the Respondent No.3 to act as DA in this case as his own inspection report is a prime relied upon document in it. In the present O.A. the applicant has neither questioned the status of the Respondent No.3 as Appointing Authority nor his right to conduct inspection at any station. He has challenged the authority of Respondent No.3 to act as DA in the subject case as the latter is an interested party in it. The Respondent No.3 may or may not be involved in the alleged irregularities, but he has already expressed his opinion and given findings with respect to the charges framed against the applicant. He cannot conduct the disciplinary proceedings and pass final orders with an open mind. He cannot provide a reasonable opportunity of being heard to the applicant. As he has the right to conduct inspection, so the applicant has the right to get an unbiased order. It is further submitted that in the counter it shows the non-application of mind by the Respondent No.3 to decide the representations submitted by the applicant independently which is of paramount importance in a quasi-judicial process. The Respondent No.2 can exercise the powers and discharge the duties of an Appellate Authority only when a Railway Servant prefers an appeal against any or all of the orders mentioned in Rule 18 of the RS (D&A) Rules, 1968. The said rule does not allow the applicant to submit an appeal against the Charge Memorandum issued. But the applicant with a view to place the matter before the department first, submitted a representation specifically before the Respondent No.3, as at that time the Charge Memorandum had already been issued under his signature as DA. Even in the decision referred by the Respondents themselves in case of Ministry of Defence versus Prabhas Chandra Mirdha, the Hon'ble Apex Court observes in para 9 of the judgment, "In

case the delinquent employee has any grievance in respect of the charge sheet he must raise the issue by filling a representation and wait for the decision of the disciplinary authority thereon". As a quasi-judicial authority, he should have exercised his own judgment. Proceedings under RS (D&A) Rules, 1968, are not routine administrative matters where open consultations can be done with superiors. The stages of consultations with other authorities/organizations have been specifically prescribed in the disciplinary rules. The decision of Respondent No.3 to refer the matter to Respondent No.2 was neither wise nor appropriate. He subjected himself to the directions of his official superiors. Even the said representation from the applicant was not addressed to Respondent No.2. Conceding for a moment but not admitting that Respondent No.2 was acting as an Appellate Authority at that time, then he should have dealt with the representation judicially, which does not reflect from the impugned order under Annexure-A/6, as he has not dealt with the concern regarding violation of the rules of natural justice in the issuance of the impugned Charge Memorandum. Also dealing of the representation submitted by the applicant directly by Respondent No.2, in absence of any decision by the Respondent No.3, took away the right of the applicant to prefer any further representation before the Appellate Authority. The Respondent No.2 in the order under Annexure-A/6 interpreted a rule framed by the Railway Board by stating that Respondent No.3 is not involved in the alleged irregularities. It is only in this context that the representation dated 28.06.2014 under Annexure-A/7 was submitted with a request to forward the matter to the Hon'ble President through the Railway Board for interpretation by the appropriate authority. The applicant contested that the involvement in the

disciplinary case may be either as a co-accused, witness, complainant, etc. the plea taken in the counter for rejection of the representation under Annexure A/7 was non-exhaustion of available channels of representation under D & AR. Again the Respondents themselves have not clarified which channels of representation the applicant bypassed. As mentioned earlier, under Rule 17 (ii) of RS (D&A) Rules, 1968, no appeal lies against an order of the nature of step-in-aid of the final disposal of a disciplinary proceeding. All these facts demonstrate that it is actually the Respondents who are beating around the bush and misleading this Tribunal by quoting wrong assumptions without going through the rules. It is further submitted that disciplinary proceedings being quasi-judicial in nature and carried out under specific statute, the orders passed in such proceedings has to be communicated under the signature of designated authority only. The Respondent No.4 was not authorized to call for defence statement from the applicant. The decision of the Respondent No.3 which was stated to be recorded in the note-sheet by himself, neither mentioned about calling for defence from the applicant, nor does it authorized the Respondent No.4 to do the same. The Respondents have also failed to quote the statutory provisions from which the Respondent No.2 derived authority to pitch in the middle of the disciplinary proceedings. The Respondents are also silent on the allegations of non-supply of the copy of the orders wherein the powers to interpret disciplinary rules framed and instructions given by the Ministry of Railways(Railway Board) have been delegated to the Respondent No.2. It has been stated in the counter that the Respondent No.4 has not exercised powers as a DA in this case. But it has not been clarified as to under which authority he called up defence statement from the applicant which only a DA can do.

7. It is further submission of the Ld. Counsel is that the applicant never admitted in the O.A. that the Respondent No.3 is the competent authority to act as DA. He has only stated about the rank of officers who can act as DA in his case in the context of Respondent No.4 not coming under same status. He has also stated that officers of the rank above that of Junior Administrative Grade can also act as DA. Being an officer of the said rank, the Respondent No.3 could have acted as DA in this case, had be been a disinterested party. The case being different here, an officer of higher rank, who also exercises concurrent jurisdiction as DA, should have issued the Charge Memorandum. Ld. Counsel for the applicant submits that all the grounds are based on facts on record and settled position of law. The applicant never attempted to evade the proceedings,. He only wanted to be conducted by a competent authority as he has every right to be heard by an authority who has not pre-judged the guilt. Hence he was forced to approach this Tribunal to ventilate his grievance as he was aggrieved by the arbitrary and illegal orders passed by the Respondents. He further submits that the Constitution of India confers on him the right to seek constructional remedies at appropriate stages.

8. Having perused the records of the O.A, we have heard the Ld. Counsels of both sides, and also perused the written arguments filed by Ld. Counsels. The applicant has prayed for quashing of charge sheet as issued against on him on the ground that charge memorandum was issued, basing upon the inspection report of the Disciplinary authority himself. He alleges that the Disciplinary Authority is personally involved in the case, and would be also a prosecution witness in the inquiry proceeding. The Ld. Counsel has cited the

decision of the Hon'ble Apex Court in the case of Md. Yunus Khan Vs. State of U.P. decided on 28th September, 2010 in which the Hon'ble Apex Court has, relying on many previous decisions of the Hon'ble Apex Court held that "Anyone who had a personal stake in an inquiry must have kept himself aloof from the inquiry" It was further held as follows in para 28 of the order.

> "28. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he can not be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudication. No person can be a judge of his own cause, and no witness can certify that his own testimony is true. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void".

9. The Ld. Counsel for Respondent-Railways has, on the other hand, submitted that Master Circular No.67 of the Railway Board lays down that an authority who has functioned as Chairman or Member of a Fact Finding Inquiry or Accident Inquiry, must not act as a Disciplinary Authority, since the charged employee would have an apprehension that the authority having already expressed an opinion, may be biased against the employee. In the present cases however, the disciplinary authority was not involved in any fact finding inquiry. He carried out surprise inspection of the station and on the basis of "inspection report", he issued the charge sheet. In this case, there is no bar on the Disciplinary Authority to be the Disciplinary Authority in respect of the proceedings. This is not a case where the Disciplinary Authority is the judge of his own case. The authority is also not the inquiry officer, but only the Disciplinary Authority. It is also argued that the Hon'ble Apex Court in the case of Ministry of Defence Vs. Prabhas Chandra Mirdha has laid down the law that the

Court/Tribunal should not interfere in the initial stage of a disciplinary proceeding, and a charge sheet may not be quashed at the threshold.

10. The maxim that no authority should be a judge of his own cause is unassailable. That being admitted, the only issue for determination in the case is whether the fact that proceedings were initiated on the basis of inspection report of the Disciplinary Authority will be construed as an involvement of the Disciplinary Authority in the case. Another issue to be decided is whether it can be said that the Disciplinary Authority is assuming the role of a judge in his own cause. It can be answered with certainty that he is not a judge of his own cause in the disciplinary proceeding. He is not personally involved in the matter. He has officially inspected the Station, and made observation about the irregularities that he noticed. Officially, he is very much empowered to do that, and in fact, it is his duty. To carry out inspections, both with a prior programme, and on a surprise basis is the bounden duty of a senior official. The accusation of personal involvement is therefore rejected.

11. Next point for examination is whether the proceedings should have been started on the basis of the inspection report, and if yes, whether the Disciplinary Authority who conducted the inspection should be the disciplinary authority in rthe disciplinary proceeding. On perusal of the charge sheet, the only two documents cited are the inspection report dated 18.12.2013, and the muster roll for the period September 2013 to December, 2013. The only witness cited is one Mrunmay Mohanty, Ch DTE/Safty/SBP. The Sr. DOM who conducted the inspection and who is the Disciplinary Authority has not been cited as a witness. To that extent, the proceeding is not vitiated. If the disciplinary authority had

been cited as a witness, the proceeding would have been fully vitiated, without any doubt.

12. The Railway Board's letter dated 09.11.90 lays down that "if the disciplinary authority of a charged official is also involved in the same case then he should not act as the Disciplinary Authority in the said case (and) the authority who is next higher in the hierarchy should act as the Disciplinary Authority". In the present proceeding, strictly speaking, the disciplinary authority can not be said to be involved in the case. He has not been cited as a witness to prove the charges. But, his inspect report is the main document on the basis of which the charges have been framed. The inspection report dt.18.12.2013 is the report of inspection carried out by Sr. DOM/SBP, the Disciplinary Authority himself, accompanied by other officials. The charge sheet was issued by the same authority on 08.04.2014. There are two problems we notice here. First of all, normally an inspection report is sent to the head of office where inspection is conducted calling for a report of compliance. Depending on what compliance is received, further view is taken about the course of action. In the present case, by noting the findings of his inspection report, the Disciplinary Authority decided that the applicant made himself liable for disciplinary action. This appears to be a premature conclusion, and may also be construed as a reflection of prejudice. The other point is that the objective of an inspection is to principally improve the system. The objective is certainly not to punish somebody, even though eventually disciplinary action may be called for against errant employees. But if the inspection report is made the only supporting document for starting a disciplinary proceeding, then in our opinion one principal objective of inspection,

i.e., the improvement of system is partially defeated. However, by stating this ideal position, we do not want to say that the authorities are estopped from initiating disciplinary action founded upon an inspection report. Coming to the second problem, we observe that during the inspection, the disciplinary authority formed his opinion which is reflected in the inspection report. Even if the charges are inquired by the Inquiring Authority, the report of inquiry will be submitted to the Disciplinary Authority. The Disciplinary Authority may be biased in his opinion while he takes a view on the inquiry report. We can not jump to a conclusion, but the possibility of bias can not be ruled out. Objectivity is not an easily available virtue among men and women. Susceptibility to prejudice and bias is also not uncommon. Therefore, the question here is whether it will be appropriate for the Disciplinary Authority to decide the matter, when the possibility of bias exists, and when the applicant expressing such apprehension has also represented to higher authorities. We reiterate the observation of the Hon'ble Apex Court in the Md. Yunus Khan (quoted supra) that "an apprehension of bias operates as a disqualification for a person to act as adjudicator". We finally come to the question of natural justice, which is the corner stone of a system of law. This principle demands that all possibility of bias has to be ruled out. The respondents are at liberty to initiate disciplinary proceedings on the basis of acts of commission and omission pointed out in the inspection report. But natural justice demands that all possibility of ties may be eliminated from beginning.

13. Therefore, considering the above discussion, the charge sheet dt. 08.04.2014 is quashed. The respondents are at liberty to appoint the next higher authority as the Disciplinary Authority in respect of the applicant in the present case, considering the facts and circumstances and initiate fresh proceedings.

With the above observation, the O.A. is allowed to the extent stated above with no order as to costs.

(R.C. MISRA)
MEMBER(A)

(A.K. PATNAIK)
MEMBER (J)

K.B.