CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 401 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Pitabas Das, aged about 58 years, Ex-GDSMC of Budamal BO, S/O Late Thabira Dash, At/PO-Budamal, Via – Rajbora Sambar, Dist-Bargarh-768036.

.....Applicant

VERSUS

1. Union of India, repreented through its Secretary-cum-Director General of Posts, Dak Bhawan, Samsad Marg, New Delhi – 110116.
2. Post master General, Sambalpur Region, At/PO/Diost-Sambalpur-768001.
3. Superintendent of Post Offices, Sambalpur Division, At/PO/dist-Sambalpur-768001.
4. Inspector of Posts, Rajbora Sambar Sub Division, At/PO-Rajbora Sambar, Dist-Bargarh-768036.

.....Respondents

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr. L.Jena, counsel

Heard & reserved on : 9.7.2019 Order on : 7.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant was engaged as a Gramin Dak Sevak (in short GDS) under the respondents. He was issued a charge sheet dated 9.4.2008 (Annexure-A/1) under the provisions of the GDS (Conduct and Employment) Rules, 2001 (referred hereinafter as 'Rules, 2001'), which was inquired into by the Inquiry Officer (in short IO). The IO submitted his report dated 4.5.2011 (Annexure-A/5) with the findings that the charges were not proved against the applicant. But the respondent no. 4, being the disciplinary authority, issued a disagreement note (Annexure-A/6) on which, the reply

was submitted (Annexure-A/7). Vide order date 30.8.2011 (Annexure-A/8) and corrigendum dated 7.9.2011 (Annexure-A/9), the applicant was dismissed from the engagement. Appeal dated 11.10.2011 (Annexure-A/10) was filed, but the appellate authority (respondent no. 3) rejected the appeal vide order dated 27.6.2012 (Annexure-A/11). The revision filed was also dismissed vide order dated 22.5.2013 (Annexure-A/13). Being aggrieved, the applicant has filed this OA with the prayer for the following reliefs:-

> "In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure-A/1, A/6, A/8, A/9, A/11 & A/13 and direct the respondents to reinstate the applicant in service with all consequential benefits with back wages and 18% interest thereon and impose exemplary cost & compensation.
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> And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.
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> And for this act of kindness, the applicant as in duty bound shall remain every pray."

2. The main grounds advanced in the OA are as under:-

(i) The statements recorded in preliminary inquiry cannot be relied upon for imparting punishment.

(ii) There is violation of the spirit of Article 14 and the rule 15(2) of the CCS (CCA) Rules, 1965.

(iii) Before disagreeing with the TO's report, the respondent no. 4 should have given the applicant an opportunity of hearing.

(iv) The applicant did not have opportunity to cross-examine the witnesses.

(v) The respondent no. 4 acted as a judge of his own cause in this case since one of the charge is misbehaviour to the respondent no. 4.

3. The respondents have filed Counter stating that the applicant was chargesheeted vide order dated 9.4.2008 (A/1). After the applicant denied the charges, the Inquiry Officer was appointed to inquire into the charges. The findings of the IO as per the report were that the charges were not proved. B ut the respondent no. 4 did not agree with the report of the IO on the ground that the evidence was not evaluated properly for which the disagreement note was issued. It is stated that after following due procedure, penalty of dismissal was imposed by the respondent no. 4 vide

order dated 30.8.2011 (Annexure-A/8). Then the applicant filed the appeal before the respondent no. 2 who rejected the said appeal. The revision filed was also rejected. It is averred that the authorities have passed the orders after examining all the facts as well as the records of the case. It is stated that Sri Jangulu Kumbhara against whom the applicant had claimed to have complained, was also removed from engagement. It is stated that the respondent no. 4 acted as per the rules. It is stated in the Counter that as per the rule 15, the disagreement note alongwith the inquiry report was supplied to the applicant for his reply. Hence, the contention in the OA that opportunity was not provided has been denied. Regarding the report of the IO, it is stated that the report is not binding on the disciplinary authority as he may disagree with the findings of the IO.

4. The applicant filed the Rejoinder stressing on the point that the respondent no. 4 became the judge of his own cause as he was a complainant in this case as one of the charges was misbehaviour to the respondent no. 4. It is further stated that the statements of the witnesses during the inquiry revealed that their written statements were taken either on coercion or deceitfully, as the copies of the statements of some of the witnesses at Annexure-A/15, A/16 reveal. It is stated that the respondent no. 4 wanted to take some statement from him on coercion on 10.4.2007, which was refused by the applicant. It is reiterated that the applicant had made complaints against Sri Kumbhara who was removed from engagement. It is also stated that the applicant has not misappropriated government money nor violated any rules of the department and the action of the respondents is baseless and incorrect.

5. We heard learned counsels for both the parties, who broadly reiterated the contentions made in their respective pleadings on record. Applicant's counsel also raised the issue that the punishment is disproportionate. In reply, the respondents' counsel submitted that such a ground has not been taken in the OA. From the contentions of the rival parties, we are of the view that the following two issues are required to be decided in this case:-

(a) Whether the order passed by the respondent no. 4 as the disciplinary authority in this case is based on evidence on record, particularly when as per the report of the IO, charges against the applicant were not proved.

(b) Whether the respondent no. 4 acting as the disciplinary authority has vitiated the departmental proceeding against the applicant.

6. Following charges were framed against the applicant by the respondent No. 4 (Inspector of Posts, Rajbora Sambar) who acted as the disciplinary authority in this case:-

> "Statement of article charges on the basis of which charge sheet has been framed.
>
> **Article-I**
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> Sri Pitabas Dash while working as GDSMC of Budamal BO in account with Rajborasambar SO during the period from 23.12.78 to 31.10.2007 received the BO TB closed by Rajborasambar SO on 29.1.2007 for Budamal BO but did not make over the said TB to the GDSBPM budamal BO on 29.1.07 and wilfully returned the said BOTB to Rajborasambar SO on the same day and made over the said TB to the SPM, Rajborasambar SO.
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> By the aforesaid acts of misconduct the said Sri Dash failed to maintain devotion to duty in contravention of Rule 21 of GDS (Conduct & Employment) Rules, 2001.
>
> **Article-II**
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> Sri Pitabas Dash while working as GDSMC of Budamal BO in account with Rajborasambar SO during the period from 23.12.78 to 31.10.2007 deliberately refused to give his written statement on 9.4.07 to the Inspector of Posts Rajborasambar Sub Division during inquiry conducted against Sri Jangalu Kumbhar GDSBPM Budamal BO who was alleged to have committed SB fraud.
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> By the aforesaid acts of misconduct the said Sri Dash failed to maintain devotion to duty and thereby violated the provision of Rule 21 of GDS (Conduct & Employment) Rules, 2001.
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> **Article-III**
>
> Sri Pitabas Dash while working as GDSMC of Budamal BO in account with Rajborasambar SO during the period from 23.12.78 to 31.10.2007 came to the chamber of Inspector of Posts Rajborasambar Sub Division on 11.4.07 and misbehaved Sri Bhagyadhar Das, Inspector of Rajborasambar Sub Division in filthy and intemperate language in presence of Sri Kishore Ch. Barik, GDSMC Dahita BO and Sri Pranadhan Harijan GDSMC Dahigaon BO violating disciplined decorum and decency of the office.
>
> By the aforesaid acts of misconduct the said Sri Dash failed to maintain devotion to duty and thereby violated the provision of Rule 21 of GDS (Conduct & Employment) Rules, 2001."

The charge in Article-III related to the charge of misbehaviour to the respondent No. 4 who had signed and approved the impugned charge-sheet dated 9.4.2008. It is noticed that the allegation was that the applicant used filthy and intemperate language. In the Annexure-II of the charge-sheet, it

was written that he had used filthy and vulgar language. It is seen from Annexure-III of the charge-sheet that the written statements of the witnesses and the applicant were cited as the documents to prove the charges and the list did not include any complaint given by the respondent no. 4 regarding the alleged misbehaviour of the applicant.

7. We have perused the report of the IO (Annexure-A/5). The analysis of the evidence of the IO stated as under:-

> "Article III
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> Allegation of the prosecution was that the CO misbehaved the IPOs Rajborasambhar 11.4.2007 in filthy & intemperate language. SW-1 told that while he was present there, the CO had entered into the chamber of the IPOs with a written application and when the IPOs refused to accept he left the office saying 'I am Brahmin person and pull on begging'. SW-4 told that he had written Ext-S-4 as per the dictation of the IPOs and did not know about the test. DW-2 deposed that he was witness to Ext-S-10 on 10.4.2007 and on 1.4.2007 he was in the office and at that time the CO submitted a written reply to the IPOs. When the IPOs refused to accept, the CO left the office. There was heated arguments in between the IPOs and the CO but not a single unparliamentary word was used by the CO in his presence.
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> During the examination of IP the CO admitted to had attended the office of the OPOs on 10.4.2007 & 11.4.2007 as per the instructions of the IPOs. But as to the depositions of SW-1, SW-4 & DW-2 the CO had attended to the office of the IPOs on 11.4.2007 but all of them confirmed that there was not any type of situation which may be considered as misbehaviour. Further the allegation in article-III of the charge sheet is such that, it should had been enquired into by superior authority as the IPOs himself was victimized."

The findings of the IO as recorded in the IO's report are as under:-

> "Findings of IO
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> 1. The prosecution failed to produce Shri Jangalu Kumbhar GDSBPM Budamal Bo in the oral inquiry to confirm the facts as reported by the SW-10 in Ext-S-6. The prosecution also did not refer to annex the application of CO and the GDSBPM which were stated to had been sent to the IPOs with Ext-S-6. So the circumstances under which the CO returned the BO TB was not adduced for the non attendance of Shri Jangalu Kumbhar in the inquiry. Therefore it cannot be established that the action of the CO be treated as wilful. So for this the charges in Article-I is not proved.
> 2. As analysed in preceding paras, all State Witnesses have stated that nobody was present except Shri Jangalu Kumbhar at the time when they had put their signatures on Ext-S-5. Further all of them deposed that they had never seen the IPOs on 9.4.2007 at Budamal village,. Therefore it is surprising to say that how the CO could refuse to give statements where neither the IPOs nor the CO was present. Therefore the prosecution failed to prove the charge as alleged in Article-II.

3. SW-1 deposed that he had seen the CO entering into the chamber of IPOs on 11.4.2007 and confirmed that no such words were used by the CO which could be terms as filthy & intemperate. SW-4 also confirmed that he had not seen the CO on 11.4.2007 and the text of Ext-S-4 was written by him as per the dictation of the IPOs. The DW-2 also clearly stated that the CO had never used any typo of unparliamentarily words on 11.4.2007 while he was present there. Moreover while the IPOs himself was a victim in this case it was not proper to conduct the inquiry by himself. So the charge in Article III of the charge sheet also not proved for the above cited reasons.

Conclusion :-

On going through the documentary and oral/circumstantial evidences adduced during the inquiry and for the reason as narrated in the preceding paras I hold that all the charges framed against the CO in Article I, II and III are not proved."

8. Some of the grounds for disagreement of the respondent no. 4 as the disciplinary authority with the IO's report in respect of the Article-III are as under:-

"The IO has analyzed on Article III that as to the depositions of SW-1, SW-4 and DW-2, the CO had attended to the office of the IPOs on 11.4.2007 but all of them confirmed that there was not any type of situation which may be considered as misbehaviour. The said analysis of the IO is not at all correct and acceptable due to the reasons mentioned above clearly in details.

The IO has pointed out in his findings on Article III that as per deposition, SW-1 had seen the CO entering into the chamber of IPOs on 11.4.2007 and confirmed that no such words were used by the CO which could be terms as filthy and intemperate. The findings of the IO on deposition of SW-1 is completely incorrect and far away from the truth as SW-1 has never deposed such during examination, cross examination by CO. Re-examination by PO, Re-cross by CO and examination by the IO. **Evidence of threatening has been adduced during inquiry. Why the act of threatening shall not be taken as misbehaviour?**

Similarly the IO has arrived at his findings on Article III that it was not proper to conduct the inquiry by the IPOs himself, as he was a victim in this case. As the IPOs has not examined the CO and obtained written statement from him regarding the case, it is not proper on the part of the IO to arrive at the decision that the IPOs hs inquiry into the case. The IPOs has only obtained information related to the incidence happened on 11.4.2007 from the persons (SW-1 & SW-4) who were present at the site at the time of incidence happened in the form of written statement.

Moreover, during the inquiry it was established that written reply dated 11.4.2007 of CO (Ext-S-11) which was not accepted by the IPOs on 11.4.2007, was sent to the IPOs by registered post by the CO. Est-S-11 contains disrespectful, improper and filthy language which should not have been used by the CO and the CO has challenged the authority standard of

the Disciplinary Authority/Appointing Authority in a discourteous manner in it.

Hence, for the above said observations/reasons, the CO is not free from the misdemeanour of being misbehaved to the IPOs Rajborasambar Sub Division on 11.4.2007 and the findings of IO on Article III are not acceptable."

9. The disciplinary authority (respondent no. 4) has passed the order of punishment of dismissal of the applicant from engagement after examining the detailed representation submitted by the applicant vide letter dated 2/3.8.2011 (Annexure-A/7). While examining the charge Article-III (which is misbehaviour of the applicant to the respondent no. 4), the following observations have been made in the order dated 30.8.2011 (Annexure-A/8):-

> "While bringing the defense on my disagreement on the findings of the IO on article III of the charge, I would like to say that instead of refuting the charge and the disagreement on the findings of IO, the CO though misbehaved to the IPOs, defended himself sticking to his conduct to be as per rules and threw muds on others unnecessarily which is uncalled for and unexpected from a disciplined Sevak. **Evidence of threatening has been adduced during inquiry from the deposition of SW-1 and Ext-S-1. Whey the act of threatening shall not be taken as misbehaviour**? While bringing the defense on my findings on article III of the charge, I would like to say that instead of refuting the charge and the findings thereof, the CO vide his representation dated 2.8.2011 in a discourteous manner challenged the authority standard of the Disciplinary Authority which is quite uncalled for and unexpected from a disciplined Sevak. If the Disciplinary Authority have at any point of time committed any irregularity, the CO is having every right to bring it to the notices of the next higher authority/appellate authority, but he should not cross his limits. The words like ' fraudulent official' against a witness SW-4 who is not here to defence himself, should not be used by the CO. Being a Sevak, he should give respect to others as he expected the same from others discourteousness towards the Disciplinary/Appointing Authority is subverting of discipline entailing grave punishment. Therefore, I am having no other thought then to say that the CO is not free from the misdemeanour of being misbehaved to the IPOs Rajborasambar Sub Division on 11.4.2007. Therefore from the evidence adduced, I find that the charge under article III is proved in toto against the CO. Thus by the aforesaid acts of misconduct, the CO failed to maintain devotion to duty and thereby violated the provision of Rule 21 of GDS (Conduct & employment) Rules, 2001 which has been revised/amended as rule 21 Department of Post GS (Conduct and engagement) rules, 2011."

10. The appeal dated 11.10.2011 (Annexure-A/10) was filed by the applicant before the respondent no. 3 (appellate authority), which was rejected by the appellate authority vide order dated 27.6.2012 (Annexure-

A/12). The following observations of the appellate authority in his order regarding the Article-III charge are extracted below:-

> "So far as the charge in the article III is concerned, the findings of the IO and disagreement of the Disciplinary Authority there of concerned, disagreement of the Disciplinary Authority was that Sri Pranadhana Harijan, GDSMC, Dahigaon BO (SW-1) had never deposed that no such words were used by the CO which could be termed as filthy and intemperate language. Similarly the analysis of the evidence adduced during the inquiry by the IO as to the depositions of Sri Pradhana Harijan, GDSMC Dahigaon BO, Sri Kishore Ch,. Barik, GDSMC Dahita BO and Sri Ram Chandra Sahu, GDSBPM, Badikata BO are not correct.
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> During the course of inquiry, it was established that before the happening of the incidednt, the appellant (CO) had requested Sri Ram Chandra Sahu, GDSBPM Badikata BO to present there as a witness with a clear preplanned intention. The appellant (CO) came to the chamber of the IPOs Rajborasambhar Sub Division on 11.4.2007 at about 12.00 hours and forced the IPOs Rajborasambar to sing in one written application. When the IPOs Rajborasambar refused to sing on the written application, the appellant (CO) left the office threatening the IPOs Rajborasambhar during which 4 to 5 persons were present there. During inquiry it was also established that the written application of the applicant in which the IPOs Rajborasambar refused to sign was sent to the IPOs by registered post by the appellant (CO). This application/reply dated 11.4.2007 contains disrespectful, improper and filthy language which should not have been used by the Appellant (CO) and the appellant (CO) challenged the authority standard of the Disciplinary Authority/Appointing Authority in a discourteous manner in it. Evidence of threatening has been adduced during the inquiry from the deposition of Sri Pranadhana Harijan, GDSMC Dahigaon BO on 11.4.2007. And the act of threatening shall be taken as misbehaviour.
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> During submission of defence on the disagreement on findings of the Inquiry Officer on the articles of charges, the appellant (CO) vide his representation dated 2.8.2011 instead of refuting the charges the appellant (CO) has challenged the authority standard of the Disciplinary Authority in a discourteous manner which is quite uncalled for and unexpected from a disciplined Sevak. If the Disciplinary Authority has at any point of time committed any irregularity, the appellant is having every right to bring it to the notice of the net higher authority. Discourteous towards the Disciplinary Authority/Appointing Authority is subversive of discipline entailing grave punishment.
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> The contention of the appellant that the disciplinary Authority has pointed out only the past bad records instead of good service and passed the order is not correct. The disciplinary Authority has clearly assessed the fact of the case as per documentary and oral evidences. A corrigendum was issued by the disciplinary Authority for the typographical mistake without changing any contents of the order. So, on this ground that order of punishment cannot be made void. The appellant has argued without concern for the relevant fact on the charges made against him. The appellant rather repeated many points again and again in a disrespectful and improper language.
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> Taking into consideration all aspects of the case, I fully agree with the finding of the disciplinary Authority. The said Sri Pitabas Dash, the appellant has failed to maintain absolute integrity and due devotion to duty

> which is essential to hold a post of GDS in the Department of Posts. Under these circumstances, he is found unfit to hold such a responsible post where property of the valued customers/public and the Government are handled. IN nutshell the appellant is unfit to continue in service. Accordingly I agree with the punishment imposed by the Disciplinary Authority and reject the appeal."

11. From above, it is noted that the appellate authority (in short AA) has noted the disagreement of the disciplinary authority on the IO's report on Article-III charges and observed that the statement of the SW-1 did not state any word used by the CO which could be termed as filthy or intemperate. The AA has not discussed the part of the statement of the SW-1 which supports the contentions in the disagreement note. Further, the AA has observed that the applicant had threatened the respondent no. 4 and in his reply he had used "disrespectful, improper and filthy language". But the charge sheet in Article-III alleged that the CO had misbehaved the respondent no. 4 with filthy and intemperate language and there was no allegation that he had used improper and disrespectful language in his reply, as observed by the appellate authority. Hence, it appears to us that the findings of the AA are based on extraneous considerations, which are not a part of the charges.

12. Under the rule 18 of the Rules, 2001, it was the responsibility of the AA to examine whether the findings of the disciplinary authority are justified and whether the penalty imposed was excessive, adequate or inadequate. The rule 10 of the Rules, 2001 mandates that the penalty is to be imposed on the basis of the evidence adduced during the enquiry. On the basis of the evidence, the IO concluded that there is no evidence to prove the charges. We have gone through the disagreement note. It is found that no evidence or statement of the witness has been cited in the disagreement note to support the finding of the respondent no. 4 that the charges are proved. For the Article-I, the disagreement note has observed that the witness SW-3 has disowned his signature in his written statement given earlier. But for no reason, his deposition in the enquiry has been treated as 'not at all convincing'. It is clear to us that the disagreement note is not on the basis of any evidence on record, it is on the basis of surmises. This aspect of adherence of the disciplinary authority to the rules was required to be

examined by the appellate authority in his order dated 27.6.2012 (A/11), but it was not done. Further, the AA is required to examine if the penalty imposed was excessive, adequate or inadequate. No such examination has been undertaken by the AA who has simply concurred with the findings of the disciplinary authority without examining whether the provisions of the rules have been complied by the authorities. It is also noticed that the AA has observed in last para of his order dated 27.6.2012 (A/11) that the applicant "failed to maintain absolute integrity", a finding which is not as per the charge-sheet dated 9.4.2008 (A/1). As a result, we are of the view that the order dated 27.6.2012 (A/11) of the appellate authority is not as per the provisions of law.

13. We have also gone through the order dated 22.5.2013 (A/13) of the revisionary authority. From his discussion on the charge Article-III, it is observed as under:-

> "Regarding the charge in article III, Sri Pranadahna Harijan (SW1) has confirmed the contents of his statement dtd. 11.4.2007 (Ext-S-1) which was witnessed by Sri K.C.Barik (SW4). In his deposition Sri Harijan has deposed that the petitioner entered the chamber of the IP, Rajborasambar with a written application and forced him to sign on it. When he refused the petitioner left the place telling that he can pull on begginb and the mode of saying was threatening. Sri Gati Krushna nayak DW in his deposition has deposed that the petitioner has not used unparliamentary word. When the IP, Rajborasambar refused to accept the written reply on 11.4.2007 (Ext-S-11) the conversation between the IPO and the petitioner was loud. When the incident occurred in the office of the IPO he went to the door, which is normally opened to the PO side and the petitioner requested him to be a witness to his statement. Thus it was preplanned by the petitioner to create an unpleasant situation. Some words used in Ext-S-11, which is written by the petitioner are disgraceful and improper which amounts to misbehaviour."

It is seen from above findings of the revisionary authority in respect of the charge in Article-III that no filthy or intemperate language was used by the applicant against the respondent no. 4, although he had said something in a mode of threatening, which was not the allegation in the charge. In fact the charges in Article-III are not specific and are general in nature. Moreover, there is no complaint submitted by the respondent no. 4 who was also not examined as a witness in the enquiry. Hence, there is no evidence based on which the charges in Article-III could have been sustained.

14. In view of the above discussions, our answer to the issue (a) of para 5 will be 'No' as there is no evidence to support the findings of the authorities in the impugned orders of punishment.

15. Regarding the issue (b), as mentioned in the report of the IO (A/5), the respondent No. 4 chose to conduct the preliminary inquiry himself and took the written statements of the witnesses, although he was the person interested in the case as one of the charge was the applicant's misbehaviour to him vide charges in Article-III. This point has not been discussed by the appellate and revisionary authorities in their orders passed to confirm the order of the respondent No. 4. The respondent No. 4, who had complained of misbehaviour against the applicant functioned as the applicant's disciplinary authority and in that capacity he had issued the charge-sheet against the applicant, mainly based on the written statements of the witnesses recorded by the respondent No. 4 during preliminary inquiry. But when the inquiry report was submitted, another incumbent was in office of the respondent No. 4 who had issued the disagreement note and passed the impugned punishment order of dismissal from engagement. It is clear that the initiation of the disciplinary proceeding against the applicant by the respondent No. 4 cannot be stated to be unbiased since the respondent No. 4 was a complainant and had conducted the preliminary inquiry, based on which the charge-sheet dated 9.4.2008 was issued. The charge-sheet dated 9.4.2008 was flawed on the settled principle of law that no man can be a judge in his own case as per the ratio of the judgment of Hon'ble Supreme Court in the case of Ashok Kumar Yadav vs. State of Haryana, reported in 1985 SCR Supl (1) 657 in which it was held as under:-

> "We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where

> judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies in increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner."

16. In the case of Uma Nath Pandey & Ors vs State Of U.P.& Anr, reported in AIR 2009 SC 2357, Hon'ble Apex Court held as under:-

> "17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is `nemo judex in causa sua' or `nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, `no man shall be a judge in his own cause'. Coke used the form `aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, `no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form `nemo potest esse simul actor et judex', that is, `no one can be at once suitor and judge' is also at times used. The second rule is `audi alteram partem', that is, `hear the other side'. At times and particularly in continental countries, the form `audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely `qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, `he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, `justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

17. Applying the above principles to the present case, the violation of the principle is quite apparent in this case as the respondent No. 4 to whom the applicant was alleged to have misbehaved, had decided to function as the

disciplinary authority against the applicant instead of referring the matter to the next higher authority for taking an appropriate decision in the matter. Here the disciplinary authority himself had complained of being misbehaved by the applicant, which was included as one of the charges.

18. As a result, we have no hesitation to allow the OA by quashing the charge-sheet dated 9.4.2008 (Annexure-A/1). As a consequence, the punishment order dated 30.8.2011 (A/8), order dated 27.6.2012 of the appellate authority (Annexure-A/11) and the order dated 22.5.2013 (A/13) of the revisionary authority are also set aside and quashed. The applicant is to be reinstated in his engagement as GDS with all consequential benefits including the TRCA for the period he was out of the engagement due to the order of dismissal. The respondents will be at liberty to initiate the proceedings against the applicant afresh in accordance with law. The OA is allowed accordingly with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath