Before Hon'be R. P. Sethi and R. L. Anand, JJ.

DEV SINGH & OTHERS,—*Petitioners.*

versus

THE REGISTRAR, PUNJAB & HARYANA HIGH COURT, CHANDIGARH & OTHERS,—*Respondents*

C.W.P. 3898 *of* 1987

26th February, 1996

Constitution of India, 1950—*Art.* 226—*Termination—Enquiry Officer had personal knowledge about occurrence which was the reason for terminating services of petitioners—Charge-sheet clearly shows that Inquiry Officer was witness to occurrence—Petitioners also deprived of legal assistance—Rules of natural justice not complied with—Termination order set aside.*

Held, that the principles of natural justice postulate the fair and proper enquiry, which gives an impression that justice has been given not with a bias or prejudiced mind. The personal knowledge of the Inquiry Officer about the occurrence is presumed to be reflecting on the enquiry held by himself. The enquiry was held by Shri B. S. Nehra, the then learned District and Sessions Judge, Ferozepur. A perusal of the charge-sheet would clearly show that he was a witness of the occurrence and could have been summoned by any of the parties to depose for or against any of them.

(Para 4)

Further held, that the record of the proceedings reveals that the petitioners' request for engaging a counsel was declined without assigning any reason. Deprivation of legal assistance admittedly adversely affected the interest of the petitioners. The conclusions arrived at in the enquiry in the absence of legal assistance to the petitioners, despite their request to engage a counsel could not be made a basis for terminating their service.

(Para 8)

Further held, that the conclusions drawn by the Enquiry Officer that the charge was proved against the petitioners, are not correct as the Enquiry Officer had not strictly complied with the principles of natural justice. The report of the Enquiry Officer and the consequential action taken in that behalf being against the settled proposition of law and the principles of natural justice is liable to be quashed.

(Para 9)

R. S. Bindra, Sr. Advocate with T. N. Gupta, Ravinder Chopra, Advocate, *for the petitioners.*

S. S. Shergill, DAG, *for the respondents.*

JUDGMENT

R. P. Sethi, J.

(1) On the basis of the departmental enquiry held against the petitioners, their services were terminated,—*vide* the impugned order dated 17th November, 1980 passed by the District and Sessions Judge, Ferozepur. The Service Appeal filed by the petitioners was also dismissed,—*vide* order dated 30th September, 1981. Action of the respondent in terminating services of the petitioners has been challenged mainly on the ground that the Enquiry Officer had a personal knowledge of the occurrence dated 9th August, 1980. He had also served charge-sheet upon the petitioners. His name was mentioned in the charge-sheet. It is contended that the District and Sessions Judge holding the enquiry against the petitioners became a judge of his own cause.

(2) The writ petition has been resisted by the respondents on various grounds, as detailed in the reply filed. It is contended that under the special circumstances, the District and Sessions Judge, Ferozepur, was left with no option except to hold the enquiry himself after Shri D. S. Dhaliwal, the then District and Sessions Judge had declined to complete the enquiry entrusted to him.

(3) We have heard learned counsel for the parties and perused the record.

(4) Counsel for the petitioners have placed reliance upon *Manik Lal Advocate* v. *Dr. Prem Chand Singhvi and others* (1). *The Andhra Pradesh State Road Transport Corporation, Hydrabad and another* v. *Sri Satyanarayana Transports (Pvt.) Ltd. Guntur and others* (2), *Ranjit Thakur* v. *Union of India* (3), *Ashok Kumar Yadav and others* v. *State of Haryana and others* (4), and *Shri Bhajan Lal, Chef Minister, Haryana* v. *M/s Jindal Strips and others* (5). It is submitted that the principles of natural justice which have come into force from the dawn of the civilised society, were required to be complied with. The principles of natural justice postulate the

(1) A.I.R. 1957 S.C. 425.
(2) A.I.R. 1965 S.C. 1303.
(3) A.I.R. 1987 S.C. 2386.
(4) A.I.R. 1987 S.C. 454.
(5) 1994 (6) S.C.C. 19.

fair and proper enquiry, which gives an impression that justice has been given not with a bias or prejudiced mind. It is further contended by learned counsel for the petitioners that since the Inquiry Officer himself had the knowledge of the occurrence, it would not have been proper for him to hold the enquiry. The personal knowledge of the Inquiry Officer about the occurrence is presumed to be reflecting on the enquiry held by himself. We see substance in the contentions of learned counsel for the petitioners. The enquiry was held by Shri B. S. Nehra, the then learned District and Sessions Judge, Ferozepur. A perusal of the charge-sheet would clearly show that he was a witness of the occurrence and could have been summoned by any of the parties to depose for or against any of them. The charge-sheet served upon the petitioners reads as under :

> "I B. S. Nehra, District and Sessions Judge, Ferozepur, hereby charge you, Shri Dev Singh, Reader to the District and Sessions Judge, Ferozepur (under suspension) as under :—
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> That on 9th August, 1980 you, Shri Dev Singh while posted and functioning as Reader to the District and Sessions Judge, Ferozepur, from 4.30 P.M. to 7.30 P.M. you, alongwith most of the Class III and Class IV employees of the Judicial Department of Ferozepur Sessions Division were present outside the Canal Rest House, Ferozepur, in connection with the visit of Hon'ble Mr. Justice S. P. Goyal, Judge, Punjab and Haryana High Court, engaged yourself and participated in demonstration, which was prejudicial to public order, decency, morality and which also involved contempt of court and defamation and you were one of those demonstrators and in the course of that demonstration you took a leading part in raising slogans viz. "N. S. Mundra Murdabad, N. S. Mundra Hai Hai, B. S. Nehra Murdabad, B. S. Nehra noo Chalta Karo, Dakia Mahajan Superintendent Murdabad" in order to lower the Judicial Officers of Ferozepur Sessions Division in the estimation of public, their colleagues and their superior and thus ridiculed them in public and thereby committed acts of gross misconduct, misbehaviour and insubordination which was unbecoming of a Government employee."

(5) Dealing with one limb of the principles of natural justice, based on the maxim of "NEMO DEBET ESSE JUDEX IN PROPRIA

CAUSA", in *Shri Rattan Lal Sharma* v. *Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School. and others* (6), it was observed as under :—

> "Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameter of natural justice. In '*Russel* v. *Duke of Norfolk* [1947 (1) *All ER* 109], *Tucker, L.J.* observed :
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> > "There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."

It has been observed by this Court in *Union of India* v. *P. K. Roy* (7), that :

> "The extent and application of the doctrine of natural justice cannot be imprisoned within the straight-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."

Similar view was also expressed in *A. K. Kraipak's case* (ibid. This Court observed :

> "What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the Court has to decide whether the observance of that rule

(6) J.T. 1993 (3) S.C. 487.
(7) 1968 (2) S.C.R. 186.

was necessary for a just decision on the facts of that case."

Prof. Wade in his Administrative Law has succintly summarised the principle of natural justice to the following effect :

"It is not possible to law down rigid rules as to when the principles of natural justice are to apply; not as to their scope and extent. Everything depends on the subject matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth."

One of the cardinal principles of natural justice is 'Memo debet esse judex in propria causa' (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in *'Secretary to Government Transport Department* v. *Munuswami'* (1988) (suppl.) SCC 651), that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in *"State of U.P.* v. *Mohd. Nooh* (1958 SCR 595). In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The Officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal by holding *inter alia* that the rules of natural justice were grievously violated."

(6) To the same effect are the other judgments relied upon by learned counsel for the petitioners and noted hereinabove.

(7) To urge that since the petitioners were deprived of the legal assistence, as such the whole of the enquiry was liable to be quashed, learned counsel for the petitioners have relied upon some decisions, i.e. *State of Andhra Pradesh through the District Collector, Warangal* v. *Mohammad Sarwar* (8), *Ramoo Bapoo Gaikwad* v. *State of Maharashtra and another* (9), *Mihir Kr. Sanyal* v. *Commissioner of Excise, West Bengal* (10), *Jamuna Ram* v. *The Bihar State Warehousing Corporation and others* (11), and *Kehar Din Ex Class IV Employee* v. *The Presiding Officer, Labour Court & another* (12), *Pradeep Kumar and another* v. *State of Haryana and others* (13).

(8) The record of the proceedings reveals that the petitioners' request for engaging a counsel was declined without assigning any reasons. Deprivation of legal assistance admittedly adversely affected the interest of the petitioners. The conclusions arrived at in the enquiry in the absence of legal assistance to the petitioners, despite their request to engage a counsel, could not be made a basis for terminating their service.

(9) In our view. the conclusions drawn by the Enquiry Officer that the charge was proved against the petitioners, are not correct as the Enquiry Officer had not strictly complied with the principles of natural justice. The report of the Enquiry Officer and the consequential action taken in that behalf being against the settled proposition of law and the principles of natural justice is liable to be quashed.

(10) It has been conceded before us that after passing of the impugned order, some of the petitioners have since retired. It is further conceded that some of the petitioners have been permitted to resume their duties by means of interim orders passed by the Court on their applications. The petitioners are stated to have been drawing their salary on the basis of interim orders. Learned counsel

(8) 1971 (1) S.L.R. 507.
(9) 1974 (1) S.L.R. 568.
(10) 1975 (2) S.L.R. 19.
(11) 1980 (2) S.L.R. 760.
(12) 1992 (2) S.L.R. 199.
(13) 1992 (1) S.L.R. 461.

for the petitioners submit and we agree that directing the holding of fresh enquiry, at this stage, would not be in the interest of either the petitioners or the respondents and the same may result in frustrating the justice, to which the petitioners may be held entitled after a lapse of about 16 years.

(11) Learned counsel for the petitioners, when reminded about the nature of charges against their clients, have been very fair to concede that if re-instated, the petitioners would not insist for payment of the salary, except the part of the salary which has already been paid to them, for the period commencing from the date of termination till 30th November, 1989, when under court orders they were permitted to resume their duties and to get full salary thereafter. The offer made on behalf of the petitioners is genuine and accepted. Such of the petitioners, who have retired, are held entitled to retiral benefits in the absence of the impugned order.

(12) Under the circumstances, the writ petition is allowed and the impugned order, by which the services of the petitioners were terminated, is set aside. The petitioners are held entitled to all the consequential benefits. So far as arrears of salary for the period commencing from the date of termination till 30th November, 1989, when they were permitted to have performed the duties on payment of full salary by interim court directions, is concerned, the petitioners are held entitled to payment of 10 per cent of their salary only. The respondents shall be at liberty to adjust such amount in the arrears of salary for this period, which has already been paid to the petitioners. One of the petitioners, namely Jagdish Lal Sehgal, is reported to have retired on 31st March, 1995. He is held entitled to only the retiral benefits in the absence of the impugned order. The petitioners have voluntarily reliquished the part of salary and have made a statement in the Court that they would not press the relief for full salary of the aforesaid period. The retired employee shall be paid retiral benefits on the basis under the assumption as if the impugned order was non-existent.

J.S.T.