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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.08.2017

% **LPA 869/2013**

S V SHARMA

..... Appellant

Through: Ms. Shikha Sapra and Mr. Sumit
Chander, Adv.

versus

DIRECTOR OF EDUCATION & ORS

..... Respondents

Through: Mr. Saket Sikri and Mr. Pranav
Sharma, Adv for R-2 to 4

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The present appeal is directed against the judgment dated 08.08.2013 passed by the learned Single Judge in W.P. (C.) No. 2338/2002. The appellant had preferred the said writ petition to assail the order dated 28.08.2001 passed by the Delhi School Tribunal. The said tribunal had upheld the inquiry report and the order of the disciplinary authority passed against the appellant imposing the penalty of removal from service.

2. The impugned judgment shows that two main grounds were urged by the appellant at the time of hearing of the writ petition. The first ground was that one Mrs. M. Varshney was a member of the disciplinary committee, which was responsible for adjudication of the charges qua the appellant and

imposition of penalty on her in the departmental proceedings, and she had also appeared as a witness against the appellant in the same inquiry proceedings in respect of some of the charges. The appellant, therefore, alleged violation of the principles of natural justice on account of bias of the disciplinary committee against her. The second aspect alleged by the appellant in the writ proceedings was the violation of the principles of natural justice on account of non-supply of various documents during the course of inquiry proceedings.

3. The learned Single Judge rejected both the submissions of the appellant. So far as the first submission is concerned, the learned Single Judge observed that in all there were 26 charges levelled against the appellant and the said Mrs. M. Varshney had appeared as a witness against the appellant only in respect of 5 charges. Thus, the learned Single Judge concluded that even if the said 5 charges against the appellant are ignored or taken as 'not proved', the inquiry report and the disciplinary action against the appellant could not be faulted in respect of the other charges, which were also proved against the appellant. So far as the aspect of non-supply of documents was concerned, the learned Single Judge observed that the appellant was not able to establish the prejudice suffered by her on account of alleged non-supply of documents.

4. The submission of counsel for the appellant is that the entire disciplinary proceedings were vitiated in view of the fact that Mrs. M. Varshney was a member of the disciplinary committee. Learned counsel submits that Mrs. M. Varshney had appeared as a witness against the appellant in the disciplinary proceedings, not just in respect of five charges,

but many more and, in any event, the fact that she appeared as a witness in respect of some of the charges shows that she had interest in establishing the guilt of the appellant. This being the position, she was, obviously, coloured in her opinion against the appellant and entertained a bias against the appellant. Learned counsel seeks to rely on the decision in ***Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors.***, AIR 1993 SC 2155, which had been relied upon by the appellant before the learned Single Judge as well.

5. On the other hand, Mr. Sikri, learned counsel for the respondent No.2 supports the impugned judgment. Learned counsel submits that the learned Single Judge was justified in bifurcating the charges in respect whereof Mrs.M. Varshney had appeared as a witness, and no infirmity could be found either in the inquiry report or in the action of the disciplinary committee in respect of the other charges, with which Mrs. M. Varshney had no concern.

6. Having heard learned counsels for the parties and perused the impugned judgment, we are of the view that the same cannot be sustained. With due respect to the learned Single Judge, we cannot agree with the reasoning of the learned Single Judge. The fact that Mrs. M. Varshney was a witness in respect of some of the charges against the appellant, clearly disabled her from having anything to do, with the taking of any decision, in relation to the same disciplinary proceedings against the appellant. It is clear that, Mrs. M. Varshney acted as a judge in her own cause inasmuch, as, she led evidence against the appellant in the inquiry proceedings, and then sat as one of the members of the disciplinary committee to judge the conduct

of the appellant.

7. We may refer to the decision of the Supreme Court in ***Mohd. Yunus Khan Vs. State of Uttar Pradesh & Others***, (2010) 10 SCC 539. The Supreme Court referred to its earlier decision in ***State of U.P. Vs. Mohd. Nooh***, AIR 1958 SC 86, wherein the Supreme Court disapproved of the Officer presiding over the trial appearing as one of the witnesses by observing as follows:

“7. ... The two roles could not obviously be played by one and the same person. ... the act of Shri B.N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding.”

8. The Supreme Court further observed:

“25. The legal maxim nemo debet esse judex in propria causa (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Secy. to Govt., Transport Deptt. v. Munuswamy Mudaliar [1988 Supp SCC 651 : AIR 1988 SC 2232] , Meenglas Tea Estate v. Workmen [AIR 1963 SC 1719] and Mineral Development Ltd. v. State of Bihar [AIR 1960 SC 468] .)

26. This Court in A.U. Kureshi v. High Court of Gujarat [(2009) 11 SCC 84 : (2009) 2 SCC (L&S) 567] placed reliance

upon the judgment in Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417 : 1986 SCC (L&S) 88] and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

27. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide S. Parthasarathi v. State of A.P. [(1974) 3 SCC 459 : 1973 SCC (L&S) 580 : AIR 1973 SC 2701] and Tilak Chand Magatram Obhan v. Kamala Prasad Shukla [1995 Supp (1) SCC 21 : 1995 SCC (L&S) 251] .)

28. In Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : AIR 1984 SC 1356] a Constitution Bench of this Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. It was also considered whether in such a case, the Court should deny the relief to the employee, even if the Court comes to the conclusion that the order of punishment stood vitiated on the ground that the employee had been guilty of habitual acts of indiscipline/misconduct. This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own

testimony was true. Anyone who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The Court further held that in such a case it could not be considered that the employee did not deserve any relief from the Court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

29. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an enquiry 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 adjudicator. No person can be a judge in 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. Mr. Sikri has sought to place reliance on a decision of the Supreme Court in ***Ex. Ct/GD Girver Singh v. Union of India & Ors.*** in Special Leave Petition (C) Nos.35833-34/2016 decided on 21.08.2017, on another aspect discussed hereinbelow. But this decision also fortifies our view on the above aspect. In this case, the petitioner had been dismissed from service in October 2002. The proceedings were held to be vitiated on account of violation of section 82 of the Indo-Tibetan Police Force, Act, 1991 by the Supreme Court on a similar ground, namely, that one Dr V.V. Rao, CMO, TPT BN, was also a witness to the proceedings and he had also attended the proceedings as an independent person. In this background, the disciplinary proceedings against the petitioner were set aside.

10. We do not agree with the process, adopted by the learned Single

Judge of bifurcating the charges, and concluding that Mrs. M. Varshney could not be said to harbour any bias against the appellant, in respect of charges wherein she had not appeared as a witness. The human mind does not work in a compartmentalised manner. To say that Mrs. M. Varshney may have had a bias in respect of the 5 charges (or more, as contended by the appellant) in which she appeared as a witness, and that while considering the inquiry report in respect of the other charges, she did not entertain such a bias, would be to take a view completely divorced from reality. Justice should not only be done, but it should also appear to have been done. The test of 'Bias' is whether there is a real likelihood of bias, even though such bias has not, in fact, taken place.

11. We may refer to the decision of the Division Bench of the Bombay High Court in ***Shamrao Narayan Wankhede Vs. Municipal Council, Saoner & Others***, 2003 (3) Mh.L.J. 814. In this case, the President and Vice-President of the Standing Committee – which removed the petitioner from service after an inquiry, were in litigation against the petitioner. Another member of the Committee deposed against the petitioner in the inquiry. The Division Bench held the proceedings to be completely vitiated on account of Bias. The Division Bench observed:

“4. In Administrative Law, rules of natural justice are foundational and fundamental concept and it is now well settled that the principles of natural justice are part of the legal and judicial procedures. On the question whether the principles of natural justice are also applicable to the administrative bodies, the Supreme Court in The State of Orissa v. Binapani Devi, AIR 1967 SC 1269 held that “even an administrative order which involves civil consequences must be consistent with the rules of natural justice.” Similar view was also taken in A.A.

Kripak v. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150, *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597. One of the cardinal Principles of natural justice is: “*Nemo debet esse judex in propria caus*” (No man shall be a judge in his own cause). It has been held by the Supreme Court in *Secretary to Government Transport Department v. Munnyswamy*, 1988 Supp SCC 651 : AIR 1988 SC 2232, that a pre disposition 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.

5. In *Manek Lal v. Prem Chand*, AIR 1957 SC 425, the Supreme Court observed:

“It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases then test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.”

6. In *State of U.P. v. Mohammad Nooh*, AIR 1958 SC 86, a departmental enquiry was held against the employee. One of 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. The Supreme Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

7. In *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 : AIR

1987 SC 2386, the Court held that it is the essence of a judgment that it is made after due observance of the judicial process; that the Court or Tribunal passing it observes at least the minimal requirements of natural justice is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial “coram non iudice.” As to the test of the likelihood of bias the Court observed that the proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, “am I biased?”; but to look at the mind of the party before him.

8. *Shri Gordey, however, submitted that automatic disqualification theory rule has been diluted to a great extent. He submitted that it is not sufficient to establish that there was reasonable apprehension of bias but the proper test would be that there was real danger of bias. He relied on the observations of the Supreme Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant(2001) 1 SCC 182 at para 35 which reads as under:*

“35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement of availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case.”

9. *In the instant case, the petitioner had objected to the*

*presence of Shri Baswar and Shri Jageshwar Gupta in the enquiry committee. It is not disputed before us that the petitioner had instituted criminal cases under the Prevention of Food Adulteration Act, 1954 against Shri Jageshwar Gupta. It is also not disputed that Shri Jageshwar Gupta had also filed cases against petitioner in the civil court at Saoner as well as in this Court. The petitioner has categorically averred in the petition that the proceedings were started against Shri Baswar in Criminal Case No. 276 of 1978 at his behest. In the return filed on behalf of the Municipal Council there is no denial of this averment. Although the petitioner raised an objection before the enquiry committee by clearly indicating that the said Shri Baswar and Shri Jageshwar Gupta were inimical towards him and they should not be members in the enquiry committee such objection was turned down by the enquiry committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Standing Committee or the Council and the rules of enquiry were not such that Shri Baswar and Shri Jageshwar Gupta were required to be included in the said enquiry so that doctrine of necessity may be attracted. For appreciating the 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. As held in *Maneklal v. Premchand* (supra), the test is not whether in fact, a bias has affected judgment; the test always is and must be whether a litigant could reasonably apprehend that bias attributable to a member of the tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it was said that justice must not only be done but also appears to be done.*

*10. Next, there cannot be any doubt that Shri Bhalchandra Patil had committed a serious impropriety when he entered the witness box and deposed against the petitioner. Shri Gordey, however, tried to contend that there is nothing adverse in the deposition of Shri Bhalchandra Patil against the petitioner and thus no prejudice was caused to the petitioner. The contention is without any merit. To quote the words of Bose J. in *Mohd. Nooh's case*, "it hardly matters whether this was done in good*

faith or whether the truth lay that way because the spectacle of a Judge hopping on and off the Bench to act first as Judge, then as witness, then as Judge again to determine whether he should believe himself in preference to another witness, is startling to say the least. It would doubtless delight the hearts of a Gilbert and Sullivan Comic Operata audience but will hardly inspire public confidence in the fairness and impartiality of departmental trials and certainly not in the mind of the respondent.” Bose J. referred to the observation of Lord Atkinson in Frome United Breweries Co. v. Bath Justice, 1926 AC 586 (Q) at page 600 that “It could not possibly have been intended by this statute to authorise a practice which would, I think, be inconsistent with the proper administration of justice, namely, that a licencing justice, one of the members of the compensation authority, should, on a given occasion descend from the Bench, give his evidence on oath, and then return to his place upon the Bench to give a decision possibly based on his own evidence.”

11. Shri Deshpande relying on the decision of the Supreme Court in Institute of Chartered Accountants of India v. L.K. Ratna, (1986) 4 SCC 537, submitted that the members of the enquiry committee ought not to have participated in the proceedings of the Standing Committee. He submitted that the employee whose conduct has been the subject matter of enquiry by the enquiry committee ending in conclusion adverse to him can legitimately entertain an apprehension that the President or Vice President of the Council and other members of the enquiry committee would maintain the opinion expressed by them in their report and would press for acceptance of the report by the Standing Committee. Therefore, according to Shri Deshpande it was improper on the part of the members of the enquiry committee to participate in the proceedings of the Standing Committee. Shri Gordey, however, contended that the Standing Committee consists of 7 members out of which 5 were the members of the Enquiry Committee. He submitted that having regard to the provisions relating to quorum of the meeting doctrine of necessity would come into play. It is not necessary to express any opinion on this aspect as in our view,

the departmental enquiry was completely vitiated having regard to the presence of Shri Baswar and Shri Jageshwar Gupta in the committee and also having regard to the fact that another member of the committee had deposed against the petitioner. We have, therefore, no hesitation in holding that the enquiry conducted against the petitioner is in complete violation of the principles of natural justice and accordingly we set aside the order dated 1st February, 1977 passed by the Standing Committee directing removal of the petitioner as well order dated 5th October, 1987 passed by the Regional Director. The petitioner has already reached the age of superannuation on 30th October, 1993 and, therefore, it is not possible to grant relief of reinstatement. In the facts and circumstances of the case and in view of the financial difficulties pleaded by the respondent Municipal Council, we do not think that it would be proper to compel the Municipal Council to pay full backwages. We direct the Municipal Council to pay to the petitioner 1/4th of the salary of the petitioner from 1st February, 1977 till 30th October, 1993 and further release all the retiral benefits including pension as if he had been superannuated on 30th October, 1993. Retiral benefits to be released within four months and backwages within six months."

12. Consequently, in our view, the entire disciplinary proceedings against the appellant were clearly vitiated on account of bias, since Mrs. M. Varshney participated as a member of the disciplinary committee, and decided on the aspect of guilt of the appellant, and the punishment to be imposed upon the appellant.

13. The impugned judgment of the learned Single Judge, therefore, cannot be sustained on this short ground and is, accordingly, set aside.

14. The other aspect that remains to be considered at this stage, is with regard to the submissions made by counsel for respondent No.2, that respondent No.2 should be permitted to restart the disciplinary proceedings

against the appellant at this stage, from the stage of issuance of the charge sheet.

15. Mr. Sikri has sought to place reliance on two decisions in support of his aforesaid submission. The first is an order passed by the Supreme Court in **Girver Singh** (supra) referred to above. In the said case, the Supreme Court after holding that the disciplinary proceedings were vitiated, left it open to the concerned authorities to take appropriate action against the petitioner in accordance with law.

16. The next decision relied upon by the respondent is that of **Delhi Development Authority v. K.P. Garg**, in W.P. (C.) No. 8151/2008 decided on 05.11.2009. In this decision, the Division Bench relied upon an earlier decision of the Supreme Court in **State of Punjab & Ors. v. Dr Harbhajan Singh Greasy**, 1996 SCC (L&S) 1248. The Division Bench in para 13, 14 and 15 of **K.P. Garg** (supra) held as follows:

“13. The next point canvassed by the learned counsel for the petitioner is that after setting aside the order of removal of respondent from the service, the tribunal should have allowed the petitioner to proceed from the stage of consideration of the reply of the respondent. It is also contended that whether the respondent would be entitled to back wages and other benefits from the date of removal from service to the date of reinstatement should have been left to be decided by the petitioner in accordance with the Rules, till after the matter is reconsidered and fresh order passed in the disciplinary proceedings. It is now well settled that there is a procedural lapse in the disciplinary proceedings, and on that account the penalty imposed on the employee cannot be sustained and is set aside, the appropriate course is to permit the disciplinary authority to take a decision, on whether or not it considers it appropriate to proceed in the matter, and if he decides to

restart the enquiry, to follow the procedure from the stage at which the lapse has occurred and to take action according to law. In *State of Punjab Vs Dr. Harbhajan Singh Greasy* (supra) Supreme Court had held that if enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits as the appropriate course would be to remit the matter to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. The consequential benefits would depend upon the result of the enquiry and the order passed thereon. Similarly in *Union of India Vs Y.S. Sadhu, Ex inspector* (supra) it was held by the Apex Court that where the departmental enquiry is found to be defective on account of violation of principle of natural justice, reinstatement could not be ordered on account of such infirmities and the appropriate course is to direct fresh proceedings from the stage of alleged illegalities without ordering reinstatement. Thus on the basis of ratio of *Managing Director, ECIL, Hyderabad and ors. Vs B.Karunakar and ors.* (1993) 4 SCC 727; *State of Punjab and ors. Vs Dr. Harbhajan Singh Greasy* (1996) 9 SCC 322 and *Bharat Coking Coal Ltd. & ors Vs Babulal and anr.* 1998 SCC (L&S) 572 it is to be held that the right to reopen the enquiry, when the enquiry has been quashed as not conducted in conformity with the principle of natural justice, cannot be denied. Thus, if the order of removal of respondent from the service is to be sustained on account of non-consideration of his reply/representation, this should not result in reinstatement of respondent. Rather the proper course would be to direct the petitioner to consider the representation/reply before passing any order imposing any penalty. In the circumstances the direction of the tribunal in the impugned order dated 16th November, 2007 directing forthwith reinstatement of the respondent cannot be sustained and is set aside.

14. The learned counsel for the respondent has contended that the respondent has already superannuated. This however, will not be a ground to deny to the petitioner to conclude their enquiry and to close the matter. The order of the Tribunal dated 16th November, 2007 was stayed by this Court after the present

writ petition was filed by order dated 18th November, 2007. The order of removal of the respondent from service has been set aside on account of non-consideration of his reply/representation. Pertinently, it is not a case where the order imposing penalty has been set aside on merits and on the basis that the change against the respondent under any circumstances, could not be made out. The decision relied upon by the respondent in the case of U.P. Cooperative (supra) does not lay down, as a matter of law, that merely because the employee has superannuated, the enquiry cannot be restarted against him after the penalty is set aside on technical grounds by an order of the Court/Tribunal.

15. It will be for the petitioner to take into consideration that the charges were framed in 1988 and the enquiry was conducted in 1992 and that the considerable time has elapsed and that the respondent has superannuated, while deciding whether to restart the enquiry/ disciplinary proceedings”.

17. Having considered the submissions of learned counsels on the aforesaid aspect, in the light of the facts of the present case, we are not inclined to permit the respondents to proceed against the appellant at this highly belated stage. The appellant was charge sheeted on 24.05.1989. In pursuance of the said charge sheet, the inquiry proceedings were held and the appellant was eventually visited with the punishment of removal from service on 06.05.1991. Since then, nearly 26 ½ years have elapsed. The appellant would have superannuated, if not removed from service, in the year 2005. The appellant is 72 years of age as on date. To now permit the respondent to hold a fresh inquiry on the same charges would be to put the appellant, who is 72 years of age, to another round of inquiry and possible litigation, which would undoubtedly visit her with even greater harassment considering her old age. She would also be gravely prejudiced if such an inquiry were to be permitted since she, obviously, would not be able to

defend herself adequately in the proceedings after so many years.

18. The two decisions relied upon by Mr. Sikri, in our view, can be clearly distinguished. In ***Girver Singh*** (supra), the Supreme Court passed the order on 21.08.2017 i.e. about 15 years from the date of termination of the petitioner. From the order passed by the Supreme Court, it does not appear that the petitioner had attained the age of superannuation when the said order came to be passed, since the Supreme Court observed that “*The authorities will also take a decision with regard to the period when the petitioner was out of service from 10th October, 2002/ 12th October, 2002 until a final decision is taken*”.

19. The decision in ***K.P. Garg*** (supra) shows that in the facts of that case, the charges were framed against the respondent in 1988 and the inquiry report was submitted on 25.07.1991. The respondent was removed from service on 07.04.1992. In the meantime, he superannuated. Thus, the directions issued by this court permitting the DDA to restart the inquiry came to be issued about 17 years from the date of removal, as opposed to 26 ½ years in the present case. Once again, from the said decision, it is not evident as to how old the respondent was when the said direction was issued by this court. We also find that in ***K.P. Garg*** (supra), the only reason for the order of removal being set aside, was the non-consideration of the reply of the respondent. However, in the present case, the entire proceedings have been vitiated on account of bias and, if permitted to be restarted, they would have to be held afresh from the stage of re-constituting the disciplinary committee itself.

20. Mr. Sikri has also tendered in court the decision in ***Dr. Harbhajan***

Singh Greasy (supra). In fact, this decision supports the course of action that we are adopting. The Supreme Court while holding that the High Court committed illegality in directing reinstatement and consequential benefits of the delinquent employee, went on to observe that since the respondent delinquent had retired from service, “*now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he avoided responsibility as a doctor to treat the flood victims and that was cause for the suspension*”.

21. In view of the aforesaid, we are not inclined to permit the respondent to restart the inquiry proceedings at this highly belated stage.

22. To balance the equities, we direct that the appellant be reinstated in service from the date of her removal. However, she shall not be entitled to any back wages. The period for which the appellant remained out of service on account of her removal from service shall, however, be counted as period spent on duty for all purposes. The appellant shall be entitled to all retiral benefits from the date of her superannuation including gratuity, provident fund etc.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 28, 2017

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