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

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Date of Decision : July 13, 2016

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W.P.(C) 17662/2005

SURRENDER KUMAR (since deceased thru LRs) Petitioner
Represented by: Mr.R.K.Saini, Advocate

versus

UOI & ORS. Respondents
Represented by: Dr.Ashwani Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Rule 36 (5) (c) of the CISF Rules, 2001 reads as under:-

“36(5)(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the ‘Presenting Officer’ to present on its behalf the case in support of the articles of charge.”

2. Concededly the Rules were amended with effect from June 09, 2003 and aforementioned clause (c) in sub-Rule 5 was inserted. The charge memorandum was issued to the deceased petitioner on December 31, 2003 when clause (c) in sub-Rule 5 of Rule 36 was operative.

3. Yet in spite thereof the presenting officer was not appointed and the record shows to us that the witnesses were examined by the Inquiry Officer on his own. He has even put questions to the witnesses to elicit response which goes beyond seeking clarificatory questions. The Inquiry Officer has

cross-examined the solitary defence witness examined by the deceased petitioner.

4. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. The principle has seven well recognised facets: (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator, (iv) A witness cannot be the Adjudicator, (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.

5. If any one of these fundamental principles of the rule is breached, the inquiry will be vitiated.

6. In the decision reported as AIR 1993 SC 2155 Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Ors while dealing with this principle, the Supreme Court observed:-

"10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice.One of the cardinal principles of natural justice is 'Nemo 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. 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

11. ... For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. DE

SMITH IN HIS JUDICIAL REVIEW OF ADMINISTRATOR ACTION (1980 Edition at Page 262) has observed that a real likelihood of bias means at least substantial possibility of bias. In R. v. Sunderland Justices (1901 [2] KB 357) it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In R. v. Sussex Justices (1923 All E.R. 233) it had been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In HALSBURY'S LAWS OF ENGLAND (4th Edition Vol. 2 Para 51 it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious misapprehension of bias. The same principle has also been accepted by this Court in Manak Lal v. Dr. Prem Chand AIR 1957 SC 425). This Court has laid down that the 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."

7. In the decision reported as 1996 II LLJ 315 Workmen of Lambabari Tea Estate v. Management, Lambabari Tea Estate, the Supreme Court was dealing with a case where the Manager of the Estate presided over the inquiry, recorded the statements, cross-examined the delinquent employees and also recorded his own statement. The Supreme Court held:-

"..... The Manager did not keep his functions as the Enquiry Officer distinct but became witness, prosecutor and Manager in turn. The record of the enquiry as a result is staccato and unsatisfactory"

8. In the decisions reported as 1970 (1) LLJ 26 Workmen in Buckingham & Carnatic Mills v. Buckingham & Carnatic Mills and AIR 1975 SC 2125 Mulchandani Electrical & Radio-Industries Ltd. v. Workmen, the Supreme Court had held that the inquiry will not be vitiated

where the Inquiry Officer puts questions to the witnesses (whether prosecution witnesses or defence witnesses) to obtain; clarifications wherever it becomes necessary, provided the Inquiry Officer permits the delinquent employee to cross-examine the witnesses on such clarifications. It was made clear that this will be the position even though there is no Presenting Officer representing the employer/disciplinary authority.

9. In our opinion save and except cases where the documents are admitted and witnesses are formal a presenting officer need not be appointed but where witnesses have to be examined and questions have to be put to elicit the truth, a presenting officer must be appointed.

10. A domestic inquiry must be held by an unbiased person so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Inquiry Officer is in position of a Judge or Adjudicator. The Presenting Officer is in the position of a Prosecutor. If the Inquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor.

11. But we emphasize that an exception could be to a case where the Inquiry Officer puts some questions to a witness to clarify the evidence or ascertain the truth. While the situation in the preceding paragraph would vitiate the inquiry the situation in the instant paragraph would not.

12. Under the circumstances on the facts of the instant case keeping in view the statutory rule we declare the report of the inquiry submitted by the inquiry officer on May 05, 2004 as illegal and as a consequence set aside the order dated July 21, 2004 dismissing the petitioner from service

as also the order dated August 29, 2004 dismissing the appeal.

13. The result would be that the deceased petitioner would be entitled to be reinstated in service. But we note that he died during the pendency of the writ petition and his legal heirs were brought on record vide order dated September 25, 2008.

14. Learned counsel for the petitioners states that he does not press for back wages. In any case the department cannot be permitted to rectify the wrong by appointing a presenting officer and re-appointing an inquiry officer to conduct fresh inquiry i.e. to remove the taint and proceed ahead because the petitioner is dead.

15. Under the circumstances we direct that the respondent would treat deceased petitioner to be in service till he died and fix his pay accordingly. Based thereon family pension shall be disbursed with effect from the day next when the petitioner died. The disbursement would be to the wife of the deceased petitioner.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 13, 2016
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