

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

Reserved on : 23.02.2016

Pronounced on: 03.06.2016

+ W.P.(C) 2280/2015

A.K.S. RATHORE Petitioner

Through: Mr Amit Khemka with
Mr Rishi Sehgal, Advocates.

versus

UNION OF INIDA & ANR Respondents

Through: Mr.Ruchir Mishra with
Mr.Mukesh Kumar Tiwari,
Advocates for UOI.
Mr Inderbir Singh Alag,
Mr J.S. Lamba, Mr. Ram Singh Bisht,
Mr. Shahrooz Ahmad and
Mr. Dashrath Raghav, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

W.P.(C) 2280/2015 & CM No.4084/2015 (stay)

1. By this petition under Article 226 read with Article 227 of the Constitution of India, the petitioner impugns the order dated 02.02.2015 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3186/2012.

2. The petitioner, an economist, joined the Respondent No.2 viz, National Small Industries Corporation Limited, on 1st March 1995 as General Manager (Economic Studies) in its Delhi Head Office through direct selection. During the period 1995-2006, the petitioner held different posts, additional assignments and responsibilities in the Corporation. It is his claim

that from the time he joined till 2001-2002 (obviously including the period between 1996 to 1998) the overall ratings of his Annual Performance Reports had remained either “Very Good” or “Excellent”. However, in terms of Order No. 3/58/SIC/VIG/2006 dated 02.03.2006 he was put under suspension, apropos certain allegations pertaining to the period between 1996-98.

3. The petitioner contends that the suspension order was not accompanied by any Charge Sheet and that the Charge Sheet was served upon him only in January, 2007. The charges against him were:

“i) failure to use his delegated powers with regard to treating all the three associate units namely M/s Morgan Tectronics Pvt. Ltd. (MTPL), M/s Pragya Overseas (P) Ltd. (POPL) and M/s Shaloo Exports as a single account for the purpose of fixing their limit as well as for sanction of funds under RMA Scheme, as required under the guidelines/instructions of Corporation issued vide letter dated 11.05.1994;

ii) showing undue favours to the aforementioned units by repeatedly sanctioning the funds for raw material assistance to them under the RMA Scheme of the Corporation on the basis of Proforma invoices of little known firms without obtaining any evidence of the actual delivery of the raw material against the said Proforma invoices in utter disregard to the aforementioned guidelines’

iii) showing undue favour to M/s. MTPL and M/s. POPL by sanctioning of funds and allowing the payment of same through cheques favouring Punjab & Sind Bank a/c M/s. POPL respectively for making payments to the bank for retiring the documents covering imported raw material under the RMA Scheme without insisting upon the party for having imported the raw material and received of the same in the factory;

iv) showing undue favours to M/s MTPL by sanctioning the funds for RMA despite of knowledge of bouncing of their cheques covering the interest charges, service charges and

repayments against loans, without keeping the financial interests of the Corporation in mind;

v) showing undue favours to M/s MTPL and M/s POPL by sanctioning amounts under RMA Scheme in excess of the value of securities available with the MSIC Ltd.”

4. An inquiry was ordered by the Corporation, which was conducted by the Inquiry Officer in the month of November, 2010. The Inquiry report was submitted to the Disciplinary Authority on 18th November, 2010; it found the aforementioned charges-I & IV as not established, while Charges II, III and V were found to be partly established.

5. As no decision was taken by the Corporation on the basis of the Report, the petitioner petitioned the Central Administrative Tribunal (hereinafter “Tribunal”) impugning the proceedings through O.A. No. 1886/2012. During the pendency of the Tribunal proceeding, the Board of Directors (BOD) of the Corporation passed an order dated 19.07.2012 imposing a penalty of compulsory retirement upon the petitioner. Aggrieved by this order and to avoid multiplicity of litigation, the petitioner withdrew O.A. No. 1886/2012 and filed a fresh O.A bearing number O.A. 3186/2012 before the Tribunal.

6. The contention of the Petitioner before the Tribunal, *inter alia*, was that as the order of penalty dated 19.07.2012 was passed by the Appellate Authority, it was *ex facie* violative of the principles of natural justice as it vitiates his right to an appeal. The petitioner had also argued before the Tribunal that, in any case, the order dated 19.07.2012 was a non-speaking order and thus *non-est* in the eyes of law; that the order wrongly relied on the report of the Inquiry Officer instead of discounting the same and holding a fresh inquiry; that the schedule and guidelines issued by the CVC were not followed and that principles of natural justice were violated.

7. The Tribunal observed that, as per Circular No. SIC/Pers.1/10 (10)/08 dated 03.10.2010, for the post of General Manager held by the Petitioner at the time of issuance of the Charge-Sheet, the Chairman-cum-Managing Director was the Disciplinary Authority and the appeal was maintainable before the BOD. The Tribunal quashed the order of penalty of compulsory retirement imposed by the BOD and remitted the matter to the Disciplinary Authority to take an appropriate decision after due application of mind. For the sake of convenience, the relevant portion of the impugned order is reproduced herein:

“19. In the present case admittedly the penalty order has been passed by the Appellate Authority and the applicant is deprived of his substantive right to prefer the appeal, Thus, the same is liable to be quashed and set aside and the matter needs to be remitted back to the Disciplinary Authority. Since the penalty order is not found to be sustainable on the ground of being passed by the Appellate Authority, we deem it appropriate to not examine the other grounds taken by the applicant.”

8. It is the case of the petitioner before us today that while the Tribunal agreed with his contention that the order of penalty dated 19.07.2012 was passed by an Appellate Authority thereby extinguishing his right to appeal, the order of the Tribunal to remand the matter to the junior authority i.e. the Disciplinary Authority is a fruitless exercise; that no junior authority will have the courage to independently apply its mind to the matter without being influenced by a previous order of its senior.

9. The Learned Counsel appearing on behalf of the Petitioner relies on the case of *Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank & Ors.*¹ which reads as follows:

“It will not be fruitful to send the matter back to the bank for rehearing of the matter by the named disciplinary authority

¹ (1995) 2 SCC 474

since the appellate authority which is higher authority has already taken a decision in the matter and it cannot be expected that the lower authority will take a different decision.”

10. The petitioner contends that the impugned judgment dated 02.02.2015 has been passed without application of mind to the material on record; that the defect of passing of penalty order by the Appellate Authority was a defect which goes to the root of the matter and cannot be now repaired; that the Petitioner cannot be punished for the acts and omissions of Respondent No.2 who has violated the principles of natural justice.

11. We have heard arguments from both the sides in detail. The petitioner had submitted that the charges against him are cropped up and are stale as they relate to 1996-98 and were almost 20 years old. The petitioner has suffered personally, professionally and financially continuously for the last 10 years. In January, 2016, the petitioner had superannuated. The question of delay in the departmental proceedings has not been specifically adverted to and examined in the impugned order. It appears that this contention was neither raised nor pressed. In the grounds in the present writ petition impugning the order passed by the Tribunal, this facet is not highlighted. The petitioner has been charge sheeted by the CBI and is facing prosecution under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Sections 120 and 120-B of the Indian Penal Code, 1860. The said criminal case was registered on 20th March, 2003. It appears that the incriminating facts had then come to the notice. The petitioner was put under suspension on 2nd March, 2006 as a criminal case had been registered and disciplinary proceedings were contemplated. Thereafter, charge sheet was issued on 27th December, 2006. The disciplinary proceedings had culminated in the order of punishment of compulsory punishment with effect from 19th July, 2012. The disciplinary

proceedings had certainly taken a long time. However, there are two aspects raised by the respondents. Firstly, it is stated that the petitioner had submitted his defence statement belatedly on 20th September, 2010. The delay the petitioner claims was for the reason that relevant documents relating to the *lis* were not furnished. The respondents state that this was a lame excuse. The respondent and the petitioner had also contested the appointment of the defence officer.

12. One of the primary issues, which had arisen, before the Tribunal was whether the Chairman-cum-Managing Director was the disciplinary authority as the petitioner was holding the post of General Manager at the time of issue of charge sheet. In the event, the Chairman-cum-Managing Director was the disciplinary authority, an appeal was maintainable before the BOD. The stand of the respondent was that the BOD was the Disciplinary Authority. In the impugned order, the Tribunal has held that the Chairman-cum-Managing Director was the disciplinary authority and not the BOD. It is in this context that they have set aside the order passed by the BOD, for the Chairman-cum-Managing Director was the disciplinary authority and the BOD was the appellate authority. The Tribunal has held that the penalty order passed by the appellate authority had deprived the petitioner of his right to appeal. The right to appeal against the order of the Disciplinary Authority cannot be curtailed or circumvented.

13. In **Surjit Ghosh** (supra), the Supreme Court had ruled that when a higher authority passes an order of punishment, the employee concerned is deprived of a substantive right of appeal, if provided and given to him by the Rules/Regulations. It held:

“6. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of

punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the power of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour(sic) of legality.”

The ratio in *Balbir Chand vs. Food Corporation of India Ltd. and Ors.*² is similar. It held:

*“3. The learned Counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a judgment of this Court in *Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank* AIR 1995 SC 1053 . It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances where the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee*

² AIR 1997 SC 2229

to avail of right of appeal. It is now well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellant authority had passed the order removing the officer from service. Thereby, appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules, In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution.”

14. Relying on the two judgments, the Tribunal quashed the order of penalty of compulsory retirement passed by the BOD and has remanded the matter to the Disciplinary Authority for the following reasons:

“16. Merely because the review preferred by the Appellate Authority could be decided as appeal, it cannot be held that the imposition of penalty by the Appellate Authority has not caused any prejudice to applicant, as the disposal of appeal by a different and superior authority and the disposal of review by the same authority which passed the order under review cannot be placed on identical footings. When in disposal of appeal by the superior authority not only the mind of a different body or authority is applied but the scope of fair and open examination of the order under appeal is much broader, the scope of review of an order by the same authority may be by applying the yardsticks as applicable to appeal would still be very limited. It may be one of the arguments that once it is the Appellate Authority, which has

to finally examine the correctness of the order of the Disciplinary Authority, even if the penalty order was passed by the Appellate Authority, no prejudice can be said to be caused to the charged official, the same may not be acceptable for the simple reason that the Disciplinary Authority which is in better position to appreciate the work and conduct of an employee subject to its direct disciplinary control may take apt decision regarding imposition of the penalty. The Appellate Authority, which is comparatively distant from the day to day work and affair of the charged officer may not be so equipped to take decision regarding imposition of penalty as the Disciplinary Authority having direct control over the work and conduct is equipped. Besides once the law provides for an opportunity to an employee to test the order of Disciplinary Authority before the Appellate Authority, such remedy cannot be taken away by imposition of penalty by the Appellate Authority.

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21. Thus, the order of penalty of compulsory retirement imposed upon the applicant is quashed. The matter is remitted back to the Disciplinary Authority, i.e., CMD and NISC to take appropriate decision after due application of mind. If the applicant so chooses to do so, it will be open for him to put forth all the grounds available to him before the Disciplinary Authority by way of written submission within one week. Such written submissions, if any made by the applicant to the Disciplinary Authority would be examined by it while taking the final decision. The treatment of the intervening period would abide by the decision required to be taken by the Disciplinary Authority. In view of the aforementioned order passed by the High Court, in the event, the order of imposition of penalty of compulsory retirement is again passed by the Disciplinary Authority, the same would relate back to the date of the order of punishment under challenge. No costs”

15. The core argument of the Petitioner is that though the matter is now remitted to the Disciplinary Authority, i.e, CHAIRMAN-CUM-MANAGING DIRECTOR of the NSIC, he cannot be expected to take a decision which is different from the decision already taken by the senior authority, i.e., the BOD and that any decision of the Disciplinary Authority will be influenced by the

previous order. The dictum of the Supreme Court in *Surjit Ghosh* (supra) is that since the Appellate Authority, which is the higher authority, has already taken a decision on the matter, it cannot be expected that the lower authority would take different decision and, therefore, sending the matter to the lower authority would serve no purpose.

16. We have referred to the factual matrix and also the defence raised by the respondent before the Tribunal that the BOD was the Disciplinary Authority and the Tribunal has held that the stand of the respondent was erroneous and the Chairman-cum-Managing Director was the Disciplinary Authority and appeal would lie before the BOD. This being the position, we cannot equate the present case with that of *Surjit Ghosh* (supra). In that case, the Supreme Court after setting aside the order of dismissal on the question whether an order of remand should be passed, had observed as under:-

“8. The question, however, is what consequential order should be passed in the present case. It will not be fruitful to send the matter back to the Bank for rehearing of the matter by the named disciplinary authority since the appellate authority which is the higher authority has already taken a decision in the matter and it cannot be expected that the lower authority will take a different decision. These proceedings have been pending against the appellant right from the year 1982 till this day and the appellant has been out of employment for all these years. At one stage, the appellant had offered to forego all the arrears of his salary provided he was reinstated in service on the post to which he would be entitled at present on the basis of his continuous service till date. We had suggested to Shri Gupta appearing for the respondent-Bank to take instructions in the matter. The respondent-Bank, however, has chosen to reject the offer and has instead suggested that the Bank would like to pay compensation to the appellant since it has lost confidence in him. We have considered the charges against the appellant and we find that apart from the fact that much can be said in favour of the appellant in support of his contention that the charge has been trumped up against him. The inquiry also prima facie suffers from defects as pointed out above, though we must add that we have not gone into

the merits of the said defects. The appellant is an ex-Army Officer. What is further, the compensation amount, if directed to be paid would come to about Rs 20 lakhs. The Bank is a nationalised Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he has nothing to do with the monetary transactions of the Bank, such as the establishment section, etc., even assuming that the Bank has reasons to lose confidence in him.

9. We are informed at the Bar that the post to which he would be entitled would be in Grade Scale IV with the basic pay of Rs 5350 per month which is on par with the contemporary existing officers of the Bank who have been promoted to Grade Scale IV on and from 29-5-1993. We, therefore, direct as follows (a) the appellant should be paid a compensation of Rs 50,000 in lieu of his claim for arrears of salary; (b) he should be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled today on the basis of his continuous service, within four weeks from the date of receipt of this order...”

17. A reading of the aforesaid paragraphs would indicate that there were several reasons why an order of remit was not passed. This included the fact that the disciplinary proceedings had remained pending since 1982 and the appellant before the Supreme Court, was out of employment. The appellant had agreed to forgo his salary arrears, provided he was reinstated in service. The employee/ bank did not agree. The Supreme Court felt that compensation should not be paid as the bank was a nationalized bank and money belonged to the public. Moreover, the appellant could be placed in a department where he would have nothing to do with the monetary transactions, assuming that the bank had lost confidence. The rank held by the employee mattered. A reading of the aforesaid reasons in the case of *Surjit Ghosh* (supra) would indicate that the Supreme Court had not laid down any specific legal ratio, though there was certainly an observation that remitting

the matter for re-hearing might be futile, for earlier the decision was taken by higher authority and the Court did not expect that the lower authority would take a different decision. Apparently, the said observations were made in the view stand taken by the bank wherein they had refused to reengage the appellant on the ground that they had lost confidence even when the appellant had agreed to rejoin without back wages.

18. In *Brij Bihari Singh v. Bihar State Financial Corporation and Ors.*³, while dealing with a case that involved a similar argument on the question of remit, the Supreme Court after referring to *Surjit Ghosh* (supra) had held:

“14. In Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and Ors. : (2002) 2 SCC 290, a similar case came for consideration before this Court. In that case, the Appellant who was an employee of Braithwaite and Company Ltd., a Government of India undertaking, was subjected to disciplinary proceedings. The enquiry committee submitted its report to the disciplinary authority who was the Chairman-cum-Managing Director of the Company. The disciplinary authority passed an order of removal of the Appellant from service. The Appellant moved the Board of Directors who was the appellate authority. When the appeal was taken up by the Board, the said Chairman-cum-Managing Director participated in the deliberation of the meeting of the Board which heard and dismissed the appeal. On these facts, this Court held that the proceeding of the Board was vitiated on account of participation of the disciplinary authority while deciding the appeal preferred by the Appellant. Similar view has been taken in the case of Institute of Chartered Accountants of India v. L.K. Ratna and Ors. : (1986) 4 SCC 537.

15. In the case of K. Chelliah v. Chairman Industrial Finance Corporation of India and Anr.: AIR 1973 Mad. 122, an employee of the IFCI was dismissed from service. The decision to terminate the employee was taken up by the Chairman who was also a Member of the Board which considered the appeal. The

³ 2016(1) AJR 560

High Court held that the entire proceeding was vitiated by non-observance of principles of natural justice.

16. After giving our anxious consideration in the matter, we are of the definite view that the procedure adopted by the Respondents in removing the Appellant from service is erroneous and suffers from serious discrimination and bias. Further, the Enquiry Officer conducted the enquiry without following the procedure and without giving sufficient opportunity to the delinquent to place his case. Enquiry is also vitiated in law.

17. For the reason aforesaid, we find that the appeal deserves to succeed. The orders passed by the Board of Directors and the impugned judgments passed by the High Court are liable to be set aside. The matter is, therefore, sent back to the Disciplinary Authority to proceed from the stage of the enquiry afresh and pass a reasoned order in accordance with law after giving full opportunity of hearing to the Appellant. Needless to say if the Appellant is aggrieved by the final order that may be passed by the Disciplinary Authority, he shall have a right to appeal before the appellate authority.

(emphasis supplied)

19. The aforesaid decision is a complete answer to the contention raised by the petitioner. It cannot be laid as a proposition or precept that in no case or order of remand should be passed, where there is a lapse of the nature indicated in the case of *Surjit Ghosh* (supra). A decision on remand would depend upon the factual matrix of each case.

20. In the light of the abovementioned judgment of the Hon'ble Supreme Court, we see no reason to interfere with the impugned order in the facts of this case. The matter is, therefore, sent back to the Disciplinary Authority who shall hear the matter afresh and pass a reasoned order in accordance with law, uninfluenced by the earlier order, after giving full opportunity of hearing to the petitioner. If the petitioner is aggrieved by the final order that may be

passed by the Departmental Authority, he shall have a right to appeal before the Appellate Authority.

21. The respondents have intimated the Court by way of affidavit of the composition of the Board of Directors. The Composition of the present Board of Directors is as follows:

<i>S. No.</i>	<i>Name</i>	<i>Particulars</i>	<i>Details</i>
1.	<i>Shri Ravindra Nath</i>	<i>Chairman cum-Mg. Director, NSIC Limited</i>	<i>Chairman cum-Mg. Director, NSIC Ltd., NSIC Bhawan, Okhla Indl. Estate, New Delhi</i>
2.	<i>Shri Amarendra Sinha</i>	<i>Government Nominee Director</i>	<i>Secretary, National Commission for Minorities, Formerly Special Secretary & Development Commissioner, Ministry of MSME, Nirman Bhawan, New Delhi</i>
3.	<i>Shri S.N. Tripathi</i>	<i>Government Nominee Director</i>	<i>Additional Secretary, Ministry of MSME, Udyog Bhawan, New Delhi</i>
4.	<i>Shri P. Udayakumar</i>	<i>Director (Plg. & Mkg.), NSIC Ltd.</i>	<i>Director (Plg. & Mkg.), NSIC Ltd., NSIC Bhawan, Okhla Indl. Estate, New Delhi</i>
5.	<i>Shri Rakesh Rewari</i>	<i>Independent Director</i>	<i>Independent Director</i>
6.	<i>Shri Rajiv Chawla</i>	<i>Independent Director</i>	<i>Independent Director</i>

22. The Court notes that the Appellate Authority comprises two independent directors and two Government of India appointees. Therefore, two-thirds of the Appellate Authority comprises outside members or persons who are employees of the respondent corporation. They could be trusted to take an independent and a fair view in case of an appeal from the order of the DA. However, the Court notes that the Chairman-cum-Managing Director, who is the assigned Disciplinary Authority, is also a member of the BOD and thus a part of the Appellate Authority. The participation of the Disciplinary Authority in the appeal, if preferred, will be against the principles of natural justice. This view has also been taken by the Hon'ble Supreme Court in *Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and Ors.*⁴ which held:

6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as 'Debt esse Judex in Propria Causa', which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In Financial Commissioner (Taxation) Punjab and Ors. v. Harbhajan Singh -- [1996]3SCR812 , it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company

⁴ (2002) 2 SCC 290

acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswami, the then Chairman-cum-Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant.

*7. Learned counsel appearing for the respondent, however, pressed into service the "**Doctrine of Necessity**" in support of his contention. He contended that the rule against bias is not available when, under the regulations framed by the Company, the Disciplinary Authority who happened to be Chairman-cum-Managing Director of the Company was required to preside over the meeting of the Board and, therefore, the then Chairman-cum-Managing Director of the Company was not disqualified to preside over and participate in the meeting of the Board which dismissed the appeal of the appellant. We find no merit in the argument. Rule 3(d) of the Company's Conduct, Discipline and Appeal Rules (in short 'CDAR') defines 'Board' in the following terms:*

"Board means the properties of the Company and includes, in relation to exercise of powers, any committee of the Board/Management or any Officer of the Company to whom the Board delegates any of its powers."

8. In view of the aforesaid definition of the expression 'Board', the Board could have constituted a committee of the Board/Management or any officers of the Company by excluding Chairman-cum-Managing Director of the Company and delegated any of its power, including the appellate power, to the

such a committee to eliminate any allegation of bias against such an appellate authority. It is, therefore, not correct to contend that rule against bias is not available in the present case in view of the 'doctrine of necessity'. We are, therefore, of the view that reliance of the doctrine of necessity in the present case is totally misplaced.”

23. For this reason, if the petitioner chooses to file an appeal against the fresh order of the Disciplinary Authority, the Chairman-cum-Managing Director shall recuse himself from the composition of the Appellate Authority.

24. The impugned order stands modified accordingly. The petition stands disposed-off in the above terms. We have refrained from making observations on the allegations against the petitioner. Nothing stated in this order would be construed as a binding finding on the merits of the subject matter of the allegations in the charge sheet. There will be no order as to costs.

NAJMI WAZIRI, J

SANJIV KHANNA, J

JUNE 03, 2016