

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 6254 of 2014**

Santosh Yadav S/o late Ratanu Ram Yadav, aged about 55 years,  
Terminated, R/o Bangalipara, Gali No.1, PS Sarkanda, Bilapur, Civil &  
Revenue District Bilaspur, CG

**---- Petitioner****Versus**

1. Guru Ghasi Das Central University, Bilaspur through Registrar, Guru Ghasi Das Central University, Koni, Bilaspur, Dist Bilaspur, CG
2. Government of India through Secretary, Department of Human Resources Development, Shastri Bhawan, New Delhi
3. The Registrar, Guru Ghasi Das Central University, Bilaspur, Distt Bilaspur, CG
4. Executive Council of Guru Ghasi Das Central University, Bilaspur, District Bilaspur, CG

**---- Respondents**


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| For Petitioner            | : | Shri Sourabh Sharma, Advocate |
| For Respondents 1, 3 & 4: | : | Shri Avinash Mishra, Advocate |

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****06/03/2017**

Grievance of the petitioner in the present writ petition is the order of termination issued by the respondents on 10.06.2013 Annexure P-6 and the order dated 21.03.2014 Annexure P-1 whereby the appeal preferred against the said termination order has been rejected.

2. Counsel for the petitioner submits that as of now the petitioner intends to assail the order, passed by the appellate Authority, on the sole ground that the appellate Authority in the instant case was also the disciplinary Authority who had passed the termination order. Once the impugned order of termination being passed by a person in the capacity of disciplinary Authority, the same person could not have subsequently again been part and parcel of

the Appellate Committee and therefore the impugned order is bad in law to that extent.

**3.** Narrating the facts of the case counsel for the petitioner submits that the petitioner was placed under suspension on 11.06.2012 by the then In-charge Registrar Shri M.S.K. Khokhar. Subsequently, the same authority and same person issued a charge sheet on 28.06.2012. Again the same person i.e shri M.S.K. Khokhar aggrieved with the enquiry officer initiated steps for passing the punishment order. Before the punishment order was passed, Shri M.S.K. Khokhar got changed and Shri I. D. Tiwari became the In-charge Registrar who passed the order of termination on 10.06.2013.

**4.** Against the said disciplinary action, the petitioner preferred an appeal to the Appellate Authority. Surprisingly, the Appellate Committee was presided over by Shri M.S.K. Khokhar in the capacity of Pro-Vice- Chancellor and Shri I. D. Tiwari the person who had issued the termination order as the Secretary of the Appellate Committee. Counsel for the petitioner submits that the order of the Appellate Body is bad in law for the reason that both Shri M.S.K. Khokhar and Shri I. D. Tiwari were associated with the disciplinary proceedings and were part and parcel of the actions periodically taken against the petitioner during the disciplinary proceedings. Therefore, their presence in the Appellate Body definitely means principle of natural justice has not been followed. Counsel for the petitioner submits that it is a settled principle of law that the person who has passed the order cannot be part and parcel in the appellate proceedings, which fact is not disputed in the instant case. Thus, prayed for setting aside of the impugned order.

**5.** Counsel for the respondents submits that though it is not in dispute that while deciding the appeal, the Appellate Committee was presided over by Shri M.S.K. Khokhar in the capacity of Pro-Vice-Chancellor and Shri I. D. Tiwari was the Secretary of the said Committee in the capacity of In-charge

Registrar. But the two Authorities have discharged the duties of different capacity while hearing the appeal and therefore they could not have been plea of voice raised by the petitioner as has been done. He submits that the two Authorities have purely discharged the duties which were assigned at different stages in different capacities and therefore it cannot be said that the impugned order is bad in law or smacks mala fide on the part of the respondents calling for any interference.

6. True, Shri M.S.K. Khokhar and Shri I. D. Tiwari have discharged the duties in different capacities at the disciplinary stage as well as the appellate stage. But the principle of natural justice as also the law in this regard is well settled that a person cannot be a judge on his own action. The disciplinary proceeding was culminated at the behest of Shri M.S.K. Khokhar as well as Shri I. D. Tiwari. These persons could not have sat again to decide the appeal against the action which they themselves had taken.

7. The Supreme Court in the case of A. K. Kripak & others v. Union of India and others reported in AIR 1970 SC 150 has held that the proceeding in which an interested person is participated in the decision making shall stand vitiated in law and cannot be legally sustained. This view has further been reiterated by the Supreme Court in the case of G. N. Nayak v. Goa University and others reported in (2002) 2 SCC 712. Dealing with the issue of personal bias the Hon'ble Supreme Court in the case of Delhi Financial Corporation and another v. Rajiv Anand and others reported in (2004) 11 SCC 625 has held that the doctrine of "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Applying the said doctrine it would have to be shown that the concerned Officer has a personal bias or connection or a personal

interest or has personally acted in the matter concerned which is being again scrutinized at a higher level or at the appellate stage.

8. Thus, the impugned order passed by the Appellate Authority is per se illegal and deserves to be and is accordingly set aside. The matter is remitted back to the Appellate Authority to take a fresh decision on the appeal of the petitioner. It is directed that the respondent University shall ensure that both Shri M.S.K. Khokhar and Shri I. D. Tiwari would not be associated with the Appellate Committee in any manner while deciding the appeal of the petitioner.

9. At this juncture, counsel for the petitioner submits that the University subsequently to the appeal being decided have passed an order wherein it has been held that Shri M.S.K. Khokhar stands retired from service of the University w.e.f. 21.05.2012. If that be so, the said M.S.K. Khokhar would not be part of the Appellate Body to decide the appeal.

10. Taking into consideration the nature of the dispute, it is expected that the University shall take a prompt decision in deciding the appeal of the petitioner preferably within a period of four months from today.

**Sd/-  
(P. Sam Koshy)  
JUDGE**