

06 **06.06.22**

Ct. No. 04

Akd

WP.CT. 14 of 2022

Dilip Sharma

Vs.

Union of India & Ors.

Mr. Nirmalya Biswas,

Mr. Anirban Dutta.

... for the petitioner.

The petitioner has been removed from service having found guilt of issuing six number of fake seasonal tickets to the commuters of train and has challenged the order of the Central Administrative Tribunal primarily on the ground that the petitioner was not allowed to cross-examine the relevant witnesses nor was given an ample opportunity to defend his case, which attracted the violation of principle of natural justice.

On a reliable information the discrete enquiry was made and several commuters of the train were intercepted, who were possessing the fake and forged seasonal tickets issued from the counter of the relevant station manned by the petitioner. He was put under suspension for a pretty long time, which was subsequently revoked. The draft statement of imputation in support of the article of charges was forwarded to the competent authority to take a decision whether the enquiry proceeding should be initiated by appointing an enquiry officer. Since the said draft imputation of the charges founded upon the relevant allegations against the petitioner was issued by the same person, who later on assumed the charge of disciplinary authority upon promotion, a plea is sought to be projected before us that it offends the fundamental principles of jurisprudence that one cannot judge his own cause.

To buttress the aforesaid contention reliance is heavily placed upon a judgement of the Supreme Court rendered in case of *Institute of Chartered Accountants of India vs. L. K. Ratna & Ors.* reported in AIR 1987 SC 71.

It is further contended that a handwriting expert was appointed in course of enquiry but he was not examined by the presenting officer which led to a denial of an opportunity to cross-examine the said witness.

Though feebly it is contended that the punishment is inflicted by an authority junior in rank of the appointing authority and, therefore, the punishment cannot withstand on the anvil of service jurisprudence.

At the very outset we must record that the nature of allegation is serious as it has a far reaching consequences not only on the integrity of the railway officer but on the railway exchequer. The fraud which has been committed by issuing fake seasonal railway tickets to the commuters not only exposes such commuters within the regime of criminal law but have an impact on their other social standing though they are innocent and bona fide persons. It is unimaginable and unacceptable that the railway employee manning the counter of selling tickets had issued fake and forged seasonal tickets, which the common man cannot have a slightest of doubts that the tickets are ingenuine.

Such being the allegations against the petitioner the enquiry officer submitted the report holding the petitioner guilty of charges and the disciplinary

authority after marshalling the facts and scanning all the documents and evidence have arrived at the firm conclusion that no other punishment other than the punishment from removing of service is inevitable.

The draft statement of imputation in support of article of charges are the reproduction of the allegations found against the petitioner leading to framing the article of charges, which cannot be termed as conclusion nor any finality cannot be attached to it. Such statement of allegation is merely tentative and prima facie opinion having formed on the basis thereof, which can lend support from the observations of the Apex Court in case of L. K. Ratna (supra), which runs as under:

“It is apparent that in the scheme incorporated in S.21 of the Act there are separate functionaries, the Disciplinary Committee, the Council and, in certain cases, the High Court. The controlling authority is the Council, which is only logical for the Council is the governing body of the Institute. When the Council receives information or a complaint alleging that a member of the Institute is guilty of misconduct, and it is prima facie of opinion that there is substance in the allegations it refers the case to the Disciplinary Committee. The Disciplinary Committee plays a subordinate role. It conducts an enquiry into the allegations. Since the enquiry is into allegations of misconduct by the member, it possesses the character of a quasi-judicial proceeding. The Disciplinary Committee thereafter submits a report of the result of the inquiry to the Council. The Disciplinary Committee is merely a Committee of the Institute, with a function

specifically limited by the provisions of the Act. As a subordinate body, it reports to the Council, the governing body. The report will contain a statement of the allegations, the defence entered by the member, a record of the evidence and the conclusions upon that material. The conclusions are the conclusions of the Committee. They are tentative only. They cannot be regarded as 'findings'."

The authority in seisin of helm of the affairs issued a draft statement of imputation for framing the article of charges does not have any active or positive role in arriving at the conclusion nor can be said to have clothed with any power to suggest or record any statement which can be treated as sacrosanct or conclusive. Such finding is prima facie and does not bind the higher authority while taking a decision whether to initiate or not to initiate a disciplinary proceeding against the delinquent.

Therefore, even if the draft statement of imputation of article of charges is prepared by an authority who later on assumed the charge of disciplinary authority does not invite the applicability of the legal maxim "one cannot judge his own cause".

Had it been a case that the said officer had an active role at the time of enquiry proceeding and expressed his opinion on the imputation of charges or the guilt of the delinquent being a part of the disciplinary authority, it may invite a likelihood of bias and justice may not be seen to have been imparted to such delinquent. It is no doubt true that the justice is not only to be done but seem to be done by the conduct of the quasi-judicial authority or the

judicial authority in dispensing justice as any infraction or violation may violate the fundamental principles enshrined in the Constitution.

The reliance upon paragraphs 24 and 25 of the said judgement does not appear to us give any assistance to the petitioner on factual matrix where some of the members of the Disciplinary Committee which held the enquiry and found the delinquent to have committed the misconduct was a part of the member of the Council authorized under the law to inflict punishment. In such backdrop it was held:

*“24. There can be no dispute that the function of the Disciplinary Committee of holding an enquiry under S.21(1) of the Act into the conduct of the members calls for a recording of evidence by the Committee. Its duty does not end there. It must consider the evidence and come to its conclusions. As S.21(2) of the Act plainly says, it must report “the result of its enquiry” to the Council. In the absence of express or implied statutory intendment to the contrary, it appears to us that the member of such a Committee would be disqualified from participating in the deliberations of the Council when it proceeds to consider the report in order to find whether the member is guilty of misconduct. For that alone would be consistent with the fundamental principle that justice must not only be done but must also appear to be done. The nature of the function discharged by the Council in rendering its finding is quasi-judicial, and we are reminded of the observations of this Court as far back as *Manak Lal v. Dr. Prem Chand*, 1957 SCR 575 (AIR 1957 SC 425): ‘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 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.'

25. We must remember that the President and the Vice-President of the Council and 3 members of the Council compose the Disciplinary Committee. The President and the Vice-President do certainly hold significant status in the meetings of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee, would maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice-President and the other members of the Committee would be rather remote. His fears would be aggravated by the circumstance that the President would preside over the meeting of the Council, and would thus be in a position to

control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice-President, and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.”

We do not find that the disciplinary authority who inflicted the punishment was a part of the enquiry proceedings nor acted as an enquiry officer nor as a presenting officer and had no active or passive role to play in finding the guilt of the petitioner. So far as the allegation as to the denial to cross-examine the written expert is concerned, we have gone through the statement of the petitioner made before the enquiry officer admitting the signatures appearing in the documents and at the same time denying the issuance of fake tickets to such commuters. Such prevaricated stand led the enquiry officer to hold that the article of charges have been proved against the petitioner.

We are not unmindful of somewhat settled proposition of law that while exercising the power of judicial review enshrined under Article 226 of the Constitution, more particularly in a service matters, the High Court does not act as a Court of Appeal nor will scan all the evidence as an Appellate Authority. Both the authorities have found that the allegations against the petitioner are serious in nature and inflicted the punishment by removing him from service, which does not appear to be disproportionate

of article of charges. The government exchequer cannot be embezzled by a responsible officer nor a common man would ever believe that such responsible officer deserves any sympathy or marcy in the case.

We thus do not find any merit in the instant writ petition. The same is hereby dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order if applied for be supplied within three days from the date of such application.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)