

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA-246-2023 (O&M)

Date of Decision:03.03.2023

Uttar Haryana Bijli Vitran Nigam Limited and another

....Appellants

VERSUS

Kuldeep Singh Saini and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate for the appellants.

G.S. SANDHAWALIA, J. (Oral)

CM-701-LPA-2023

This application has been filed under Section 5 of the Limitation Act, 1963 for condoning the delay of 49 days in re-filing the appeal.

In view of the averments made in the application which is accompanied by affidavit, sufficient cause is made out to condone the delay. Accordingly, the application is allowed and the delay of 49 days in re-filing the appeal is condoned.

CM stands disposed of.

CM-700-LPA-2023

This application has been filed under Section 5 of the Limitation Act, 1963 for condoning the delay of 53 days in filing the appeal.

In view of the averments made in the application which is accompanied by affidavit, sufficient cause is made out to condone the delay.

Accordingly, the application is allowed and the delay of 53 days in filing the appeal is condoned.

CM stands disposed of.

LPA-246-2023 (O&M)

The present appeal is directed against the order dated 07.09.2022 passed by the learned Single Judge in CWP-9757-2022, whereby the learned Single Judge has set aside order dated 22.04.2019 (Annexure P-18) passed by the Board of Directors with a direction to pass a fresh order in appeal after affording opportunity of hearing to writ petitioner as the officer who passed the order of punishment (punishing authority) was part of the Board of Directors which was the appellate authority. The settled principle is that one cannot be a Judge in his own cause and therefore we are of the considered opinion that the order of the learned Single Judge does not suffer from any infirmity and the appeal is to be decided afresh after disassociating the punishing authority.

The punishment order dated 04.10.2018 (Annexure P-16), whereby the downgrading was done from pay level of Rs.1,41,800/- to Rs.1,29,800/- with future effect and his ACR for the relevant period was also downgraded.

It is not disputed that the punishment order was passed by Mr. Shatrujeet Kapur, IPS, Chief Managing Director. The Board of Directors in its meeting held on 26.03.2019 was presided over by the same officer while deciding the case of the writ petitioner. The writ petitioner was allegedly given a personal hearing to present his case by the Board of Directors, which was under control and which was chaired by the Chief Managing Director, who was the same officer.

In similar case pertaining to a limited Company the Chairman-cum-Managing Director of the Company was the disciplinary authority who had imposed the punishment of removal from service. He also was a member of the Board of Directors which had rejected the appeal. The Apex Court restored the order of the learned Single Judge which had been set aside by the Division Bench of the Calcutta High Court. The relevant portion of the judgment in *Amar Nath Chowdhury vs. Braithwaite and Co. Ltd*, 2002 AIR (Supreme Court) 678, reads as under:-

“5. One of the arguments raised by Shri P.P. Rao, learned senior counsel appearing on behalf of the appellant, is that the order of removal having been passed by the Disciplinary Authority - Shri S. Krishnaswami, who was then the Chairman-cum-Managing Director of the Company, was disqualified to have presided over and participated in the deliberations of the meeting of the Board which heard and dismissed the appeal and, therefore, the order of the Appellate Authority was vitiated on account of legal bias. We find substance in the argument. It is not disputed that Shri S.Krishnaswami was then the Chairman-cum-Managing Director of the Company. It is also not disputed that Shri Krishnaswami was also the Disciplinary Authority who passed order of removal against the appellant. The question, therefore, arises whether proceedings of the Board was vitiated on account of participation of the Disciplinary Authority while deciding the appeal preferred by the appellant.

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 ‘*Debet 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 from 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 others v. Harbhajan Singh, 1996 (2) RRR 457 (SC) : 1996 (9) SCC 281***, 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 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 Ceasar to Ceasar 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 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:

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.

9. For the reasons stated hereinbefore, we find that the appeal deserves to succeed. Accordingly, the order and judgment under challenges as well as the order passed by the Appellate Authority are set aside and the matter is sent back to the Appellate Authority to decide the appeal by a speaking order, in accordance with law. Before we part with the case, we further direct that the Company shall not take

any step to realise any money which has been paid to the appellant on his superannuation till the matter is finally decided by the appropriate Appellate Authority.

The appeal is allowed. There shall be no order as to costs.

Appeal allowed.”

Therefore, we are of the considered opinion that the learned Single Judge was justified to set aside the order and issue necessary directions. No case for interference is made out.

Dismissed in *limine*

(G. S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

March 03, 2023
kapil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No