

Pradeep Sharma Vs AAI

Court: DELHI HIGH COURT

Date of Decision: Sept. 23, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 234 DLT 657

Hon'ble Judges: Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench: Division Bench

Advocate: Ms. Anjana Gosain and Ms. Deepanshi Jain, Advocates, for the Respondents; Mr. Arjun Harkauli, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

Sunita Gupta, J. - The petitioner Pradeep Sharma, employed with Airport Authority of India (AAI) was transferred to Guwahati, Regional

Headquarters, North-East region vide office order dated 23.10.2001 as Deputy General Manager (Land Management). He was entrusted with

the responsibility of land management of entire North-East Region besides other responsibilities. A criminal case under Sections 376 and 342

Indian Penal Code was registered vide FIR dated 07.08.2002 in Sessions Case No.260(K)02 before the Sessions Court, Kamrup, Guwahati on

the allegations that prosecutrix along with her friend Jennifer had come to Guwahati. In the evening, she met with her friend from where they left

with a boy and a man. They went to a room of Airport Authority building where she was confined and raped by the petitioner, while her friends

stayed in the adjacent room. Prosecutrix managed to escape from there and went to the police station and lodged the FIR. After completion of

investigation, a closure report was submitted by the Investigating Officer of the case. However, the Court took cognizance and the petitioner was

put to trial. Ultimately, vide judgment dated 25.06.2003, the petitioner was acquitted primarily on the ground that prosecutrix or the other material

witnesses did not appear in the case. The medical report also states that there was no evidence of sexual assault. After one year of the acquittal,

the petitioner was served with a statement of Articles of Charges dated 04.06.2004 enumerating as many as 4 Articles of Charge against the

petitioner. The Articles of Charges reads as under:-

Statement of Article of Charges Framed against Shri Pradeep Sharma, Dy. General Manager (Land Management, Airport Authority of India

Article - I

Shri Pradeep Sharma while functioning as Dy. General Manager (Land Management) during the period of his posting in the O/o Regional

Executive Director, NER, Guwahati had developed close contacts with one Shri Rana, an influential contractor of Imphal and with his assistance

managed in getting a kidnapped contractor of M/s Kamla Constructions who was handling the work of resurfacing of runway and construction of

isolation bay, released from insurgents.

Shri Pradeep Sharma by the above acts, had acted in a manner unbecoming of him as an employee of the Authority and also failed to conduct

himself soberly and temperately while on official premises and also in public show proper respect and civility to all concerned and use almost

endeavour to promote the interest of the Authority and to maintain and promote the good reputation thereof and thereby violated Regulations

4(1)(d) and 4(3) of the AAI (Employees Conduct, Discipline & Appeal) Regulations, 2003.

Article - II

Shri Pradeep Sharma while functioning as above and during the said period was in the habit of drinking alcohol and used to attend office in

drunken condition which had effected his office work and efficiency as well as office discipline. Shri Pradeep Sharma thereby violated the

Regulation 5(xii) of AAI Employees (Conduct, Discipline and Appeal) Regulations, 2003.

Article - III

Shri Pradeep Sharma while functioning as above and during the said period had developed closed contacts with contractors who were awarded

contracts being executed under his supervision and used to entertain them at his residence after office hours thereby vitiating atmosphere of the

AAI's residential colony at Guwahati.

Shri Pradeep Sharma by the above acts had acted in a manner unbecoming of him as an employee of the Authority and also failed to conduct

himself soberly and temperately while on official premises and also in public show proper respect and civility to all concerned and used utmost

endeavour to promote the interest of the Authority and to maintain and promote the good reputation thereof and thereby violated Regulations 4(1)

(d) and 4(3) of AAI Employees (Conduct, Discipline and Appeal) Regulations, 2003.

Article - VI

Shri Pradeep Sharma while functioning as above and during the said period on 06.08.2002, in the absence of his family called a girl Ms. Rebika

Devi at his residence in the AAI's residential colony, Borjhar Airport, Guwahati, forcefully confined her in a room, outraged her modesty and

attempted to rape her. On the basis of her complaint, the Police Station Azara, Guwahati, registered a criminal case against Shri Pradeep Sharma,

arrested him and sent him for trial in the Court of Sessions Judge, Kamrup, Guwahati.

Shri Pradeep Shamra by his above acts, committed conduct amounting to criminal offence involving moral turpitude thereby violated Regulations

5(xvii) of AAI Employees (Conduct, Discipline and Appeal) Regulations, 2003.

Sd/-

(Disciplinary Authority)

2. An enquiry was conducted into the Articles of Charges. After analysing the evidence led by the department, Asha Ram, the Enquiry Officer

exonerated the petitioner of Articles I, II and III whereas as regards the Article IV it was observed that possibility of violation and molestation

cannot be ruled out. The analysis of the evidence and the findings of the Enquiry Officer is to the following effect:

Analysis:

i. The CO's insistence to provide the documents for submitting his statement of defence indicate towards an element of guilt as the management

had issued him letters of appreciation (of course not for his individual performance and character) and he should have had trust in its fairness rather

than apprehension to submit the statement of defence.

ii. At no stage, there has been any evidences to prove that charge have been levelled by vested interests and disciplinary proceedings launched due

to extraneous background. It is quite natural that no official will openly witness against a colleagues unless suffered personally at the hands of the

accused.

The charges under Articles I, II a& III had no support of document & evidence.

iii. Since the victim, Ms Rebika Devi, herself has escorted the Investigating Officer Mr. Hatim Ali, SI (PW-6) to the residence of Mr. Pradeep

Sharma (CO) [English version Exh. P-4) and identified the Quarter No.A-4102 in the AAI Colony, it Sub Inspector sufficiently proved that she

has been brought to the quarter earlier on 6th August, 2002.

iv. The court had decided the case as ""unproved"" or the lack of evidences.

v. The victim had been persuaded / brought by Ms. Jennifer / Mr. Rana to the residence of Mr. Pradeep Sharma. Rather than normally offering tea

and snacks to casual guest, she was prevailed upon to have beer and dinner and thereafter, both Mr. Rana and Ms. Jennifer left her along with Mr.

Pradeep Sharma for something which cannot be done in their presence. After their departure, obviously something transpired between Mr.

Pradeep Sharma (CO) & Ms Rebika Devi that forced her to file a police complaint against the CO, submitted a statement to the Police

Investigation Officer and another statement before the Judicial Magistrate & submitted herself to the agonies of police lock-up and medical

examination of her private parts.

All the above evidences, therefore, point towards possible commitment of an offence.

Findings:

1. Charges under Articles 376 I, II & III Not proved.
2. However, considering the facts and circumstantial evidences, "possibility of confinement & molestation cannot be ruled out.

Sd/-

(Asha Ram)

Inquiry Officer

Executive Director (Avn. Safety)

3. The Disciplinary Authority i.e. the Chairman vide his memo dated 24/27.02.2006 disagreed with the findings of the Enquiry Officer because of

the following reasons:

Though the charge has been held as not proved by the Inquiry officer, it is found that the IO has himself stated in his analysis that the victim girl

had been persuaded / brought by Shri Rana to the residence of Shri Pradeep Sharma. It is further found in the IO's report that Shri L.R. Borah

had deposed that he knew Shri Rana as a contractor. It has been emerged in the inquiry proceedings that Shri Pradeep Sharma used to reside

alone in his quarter in the AAI Colony.

The above analysis of the IO and the deposition of Shri L.R. Borah clearly highlight that Shri Pradeep Sharma was having close contact with Shri

Rana who was a contractor. This is also amply proved by the fact that a girl (said to have been used for entertainment) was brought to Shri

Sharma's residence by Shri Rana and with whom Shri Sharma was found confined in his residence.

Thus, the conclusion drawn by the Inquiry Officer in the findings that the charge is not proved is not in line with his analysis and it can be concluded

from the analysis of IO that there is sufficient merit in the charge that Shri Pradeep Sharma had developed close contacts with contractors and used

to entertain them at his residence after office hours, thereby vitiating atmosphere of the AAI's residential colony at Guwahati to an extent.

Sd/-

(K. Ramalingam)

4. Accordingly, the petitioner was offered an opportunity to make a representation against the findings of the Enquiry Officer and observations of

the Disciplinary Authority. Petitioner made his representation on 16.03.2006. Vide order dated 30.05.2006, the Disciplinary Authority passed the

following order:

Order

Whereas Shri Pradeep Sharma, Dy. General Manager (Engg.Civil) (Now DGM(C&C) was charge sheeted under Regulation 29 of AAI

Employees (CDA) Regulations, 2003 vide Memorandum No. C.14011/35/020 Disc dated 4th June, 2004 in respect of the misconduct

committed by him.

And Whereas Shri Asha Ram, Executive Director (Avn. Safety) was appointed as the Inquiring Authority to inquire into the charges framed against

Shri Pradeep Sharma;

And Whereas, the Inquiring Authority submitted the inquiry report vide letter dated 30.12.2003 holding the proceedings in accordance with the

laid down procedures, wherein he had concluded that out of four articles of charges, articles I, II & III are not proved and article IV is partly

proved;

And Whereas on careful consideration of the Inquiry Report, the Disciplinary Authority had observed that the Inquiring Authority had not taken all

the relevant points into consideration before coming to the conclusion on Article II.

And Whereas, the undersigned as the Disciplinary Authority disagreed with the findings of Inquiring Authority on Article III and tentatively decided

to agree with the findings of the IO in respect of other articles of charge, and accordingly, a detailed disagreement note along with a copy of the

Inquiry Report was forwarded to Shri Pradeep Sharma vide Memorandum dated 24/27th February, 2006, with a view to giving him an

opportunity to make his submissions if any to the Disciplinary Authority, to enable the latter to take a final view in the matter. Shri Pradeep Sharma

submitted his representation on 16.03.2006 to the Disciplinary Authority in this regard.

And Whereas on careful consideration of the Inquiry Report and reorientation dated 16.03.2006 submitted by Shri Pradeep Sharma and facts &

circumstances of the misconduct committed by him, the undersigned being the Disciplinary Authority has observed that there is no conclusive

evidence, which would categorically prove that the CO is guilty of the charges highlighted in Article III on which a disagreement note was sent to

him and IV of the Charge Sheet which has been partly proved by the IO. In disciplinary matters even if there is no conclusive evidence, the

Disciplinary Authority can take a decision on the basis of preponderances of probability. The IO has concluded in his report that the "possibility of

confinement and molestation cannot be ruled out" without any direct evidence. The Disciplinary Authority is of the considered opinion that despite

the fact that there is no direct evidence, which may establish the charge, there is preponderance of probability of the misconduct on his part. While

the CO has taken pains to give plausible explanation to the various points, particularly those on which the Disagreement Note was sent to him, the

Disciplinary Authority finds that he has not been fully able to give convincing reasons for his complete innocence. The Disciplinary Authority is

therefore of the considered view that based on the report of the IO in which charge IV has been partly proved, while there is no case for

imposition of any of the major penalties or severe minor penalties, the CO cannot be altogether exonerated of the charges levelled against him, and

on the basis of preponderance of probability of the misconduct, and the report of the Investigating Officer, the undersigned has come to the

conclusion that the ends of justice would be met, if a minor penalty of Censure is imposed on him.

Now, Therefore, the undersigned as the Disciplinary Authority, imposes the penalty of "Censure" on the said Shri Pradeep Sharma.

Sd/-

(K. Ramalingam)

Chairman

Disciplinary Authority

5. The petitioner preferred an appeal against the aforesaid order reiterating his defence and pointing out that the petitioner is being victimised by the

vested interests within the management. The Sub-Committee (Appellate Board) rejected the appeal vide order dated 08.12.2006 which is as

under:

The Sub-Committee of the Board of AAI has carefully perused the appeal dated 23.6.2006 submitted by Shri Pradeep Sharma, Jt. GM., AAI,

running into 34 pages, against the order of penalty dated 30.5.06 vide which the Disciplinary Authority had imposed the penalty of "Censure" on

him for establishment of partial misconduct highlighted in the charge-sheet issued for the major penalty vide Memo dated 4.6.04. The Sub-

Committee also noted that the I.O. had not established three out of four charges. Based on the findings of the I.O. on the 4th article of charge and

other facts and circumstances of the case, the Disciplinary Authority imposed the least of the minor penalty of "Censure" on the appellant.

2. The appellant in his appeal has inter-alia highlighted that the partial establishment of Article-IV by the I.O. is also without any evidence. As a

matter of fact, after receipt of the findings of the I.O., the Disciplinary Authority had originally decided to disagree with the findings of the I.O. on

Article-III as prima-facie, it was felt by the Disciplinary Authority that Article-III gets established on the basis of the evidence available on record,

but after receipt of the submissions of Shri Pradeep Sharma, the Disciplinary Authority decided to agree with the findings of the I.O. against

Article-III. It is observed that the appellant has almost reiterated the same points in his appeal dated 23.6.06 which have already been deliberated

at length in the detailed final inquiry, and were again considered by the Disciplinary Authority at the time of imposition of the least of minor penalty,

as the facts and evidence available on record did not warrant complete exoneration of the charges levelled against Shri Sharma. It was also

observed by the Sub-Committee that the charges levelled against Shri Sharma were very serious, but since the same could not be conclusively

proved, but were apparently partially true on the basis of preponderance of probability, the least of the minor penalty of "Censure" was imposed

on him. The Sub-Committee did not find any new material evidence or argument in the appeal, which may necessitate the intervention of the

Appellate Authority in the decision taken by the D.A. on the basis of all the facts and circumstances of the case and the findings of the I.O. and,

therefore, all the members were of the unanimous view that the appeal, being devoid of merit, may be rejected by issue of a speaking order, and

accordingly order rejection of the appeal.

Sd/- Sd/- Sd/- Sd/-

(S.C. Chhatwal) (H.S. Bains) (P.Seth) (A.K. Misra)

Member(Fin) Member(P&A) Member(Ops) Member(PIng)

Sd/-

(K. Ramalongam)

Chairman

6. The petitioner preferred a review against the aforesaid order. However, the review petition was not forwarded to the Reviewing Authority on

the ground that as per the Regulations of the respondent No.1 the prerogative to initiate review proceedings was a reserved right vested with the

Reviewing Authority. The said Regulations did not contain any provision enabling an employee to approach the Reviewing Authority against

decision of the Disciplinary Authority / Appellate Authority. The petitioner filed a writ petition being W.P.(C) No.5329/2007. Vide order dated

08.12.2008, the writ petition was disposed of with the directions to the respondent no.1 to hear the representation of the petitioner as a review

and pass an order within 8 weeks. Pursuant thereto, the petitioner filed his representation before the Reviewing Board on 13.01.2009. The

Reviewing Authority constituted a Sub-Committee for the grant of personal hearing to the petitioner. The Sub-Committee dismissed the Review

Petition vide order dated 30.03.2009, which reads as under:

Order

Whereas the Hon"ble High Court of Delhi had directed AAI vide its order dated 08.12.2008 in the W.P.(C) No.5239/2007 filed by Shri Pradeep

Sharma, Jt. GM (C&C) to consider his representation as a review.

And Whereas, Shri Pradeep Sharma had submitted his representation dated 13.01.2009 to the Review Board of AAI. The AAI Board had

constituted a "Sub-Group" of AAI Board which heard Shri Pradeep Sharma in person on 26.02.2009 and submitted its observations to the AAI

Board.

And Whereas, the AAI Board in its 129th Board meeting held on 06.03.2009 discussed the issues highlighted in the representation of Shri

Pradeep Sharma vis-a-vis the charges as well as findings of the IO. The AAI Board was of the view that the decision taken by the Disciplinary

Authority to impose the Minor Penalty of "Censure" on Shri Pradeep Sharma is justified.

Now Therefore, the undersigned hereby conveys the decision of the Reviewing Authority to retain the minor penalty of Censure imposed by the

Disciplinary Authority on Shri Pradeep Sharma vide order dated 30.05.2006.

Sd/-

(M. Dev)

Executive

7. Feeling aggrieved and dissatisfied, the present writ petition has been filed by the petitioner seeking quashing of the Enquiry Report, order dated

30.05.2006 of the Disciplinary Authority, order dated 08.12.2006 of the Appellate Authority and order dated 30.03.2009 of the Review Board

passed in Departmental Enquiry being unlawful and violative of Article 14 of the Constitution of India and principles of natural justice.

8. One of the arguments raised by learned counsel for the petitioner is that the Chairman was the Disciplinary Authority and was also the Head of

the Sub-Committee that passed the order in the appeal. The other members of the Sub-Committee were junior in rank to the Chairman in the

administrative setup thus the Chairman was the head and part of the committee i.e. to reconsider the order of the Chairman. This is contrary to the

basic judicial propriety as the Chairman was a member of the appellate forum against his own order. The Chairman should not have been part of

the Sub-Committee that passed the order in appeal dated 08.12.2006. Furthermore, the petitioner filed his representation before the Review

Board on 13.01.2009. In the representation, the petitioner categorically objected to any person who was part of the Appellate Board that heard

the petitioner's appeal to sit again as a member of the Review Board. This was particularly necessary as out of five members, two members who

were part of the Appellate Board that heard the petitioner's appeal were also members of the Review Board. This was contrary to all principles of

natural justice and fair play and was contrary to the judgment of the Supreme Court in *Amarnath Chowdhary v. Brathwaite Ltd. & Ors.*,

(2002) 2 SCC 290; *Cantonment Executive Officer v. Vijay D. Wani*, 2008 (6) Scale 633; *Financial Commissioner Punjab v. Harbhajan*

Singh, (1996) 9 SCC 281; and *Suman Bala v. Union of India*, (2005) 12 SCC 388.

9. Learned counsel appearing for the respondent, however, pressed into service ""doctrine of necessity"" in support of her contentions. According to

her, under the Regulations framed by the respondent, the Disciplinary Authority who happened to be the Chairman of the Company was required

to preside over the Sub-Committee and, therefore, there was no option available to the Chairman but to participate in the meeting of the appeal

Sub-Committee which dismissed the appeal of the petitioner.

10. Rules of natural justice are "basic values" which a man has cherished throughout the ages. Principles of natural justice control all actions of

public authorities by applying the rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of

law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of

rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly

established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

11. Natural Justice, as is well known, is principally founded on two basic principles, which are stated as under:

* *Nemo debet esse iudex in propria causa* : No man shall be a judge in his own cause, or no man can act as both at the one and the same time

a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and

* *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be

fairness on the part of the deciding authority.

12. It has been observed by Hon'ble Apex Court in *State of Orissa v. Dr. (Miss) Binapani Dei* reported in (1967) 2 SCR 625 that-

what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the

framework of the law under which the enquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose.

Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the

observance of that rule was necessary for a just decision on the facts of that case.

13. In the case before hand, we are concerned with the application of the former principle out of the two i.e. *nemo debet esse iudex in propria*

causa. This principle consist of the rule against bias and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should

not only be done but manifestly and undoubtedly be seen to be done; and (iii) the authority or body should be able to act impartially and without

any leaning in favour of one party or without any prejudice against the other. The factors which hinder or may possibly hinder in the administration

of even-handed justice are within the fold of "bias". If the judge is subject to bias in favour of or against either party to the dispute or is in a position

that a bias can be assumed, he is disqualified to act as a judge, and the proceedings will be vitiated. Nothing is to be done which creates even a

suspicion that there has been an improper interference with the course of justice. This rule applies to judicial and administrative authorities required

to act judicially or quasi-judicially.

14. In *State of Punjab, etc. v. V.K. Khanna and ors.* reported in (2001) 2 SCC 330, S.B. Sinha, J had opined, thus
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The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding

circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that

there is existing a real danger of bias administrative action cannot be sustained: If on the other hand allegations pertain to rather fanciful

apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

15. Present case is squarely covered by *Amarnath Chowdhary (supra)*. In that case, the appellant, an employee of the Government undertaking,

was dismissed from service. The order of dismissal was passed by the Chairman-cum-Managing Director of the company who was the

Disciplinary Authority. Under the Regulations framed by the company, an appeal against the order of the Disciplinary Authority lied before the

Board of Directors of the Company. The appellant preferred an appeal against the order of his removal from service before the Board. The

Managing Director participated in the deliberations of the Board and the appellant was dismissed. Substantially, similar pleas were taken by the

appellant. The question which arose was whether the proceedings of the Board was vitiated on account of participation of the Disciplinary

Authority while deciding the appeal preferred by the appellant. While allowing the appeal, it was held as under:

8. 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 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 others v. Harbhajan Singh* - 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 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 proprietors 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 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.

16. The Cantonment Executive Officer v. Vijay D. Wani (supra) dealt with substantially similar issue. In that case also, the members of the Enquiry

Committee participated in the Board meeting when the report was under consideration and it was held that the same completely vitiates the

enquiry. The relevant observations as appearing in paragraphs 5 to 17 are reproduced herein below for advantage:

5. The question of a bias is always the question of fact. The courts has to be vigilant while applying the Principles of bias as it primarily depends on

the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the members of the

committee who conducted a disciplinary inquiry was also the members of the Cantonment Board where the report was to be considered, decided

and whether to accept it or not & finding the respondent(herein) guilty or not. The very fact that these three persons who conducted inquiry were

also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should

be accepted or not. Therefore, the participation of these three members in the committee is given a real apprehension in the mind of the respondent

that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report

should be accepted. This bias in this case cannot be said to be unreal it is very much real and substantial one that the respondent is not likely to get

a fair deal by such disciplinary committee.

6. In this connection a reference may be made to the decision in the case of Institute of Chartered Accountants of India (Supra) in which a

member, accused of misconduct is entitled to a hearing by the Council. In this case Enquiry Committee composed of the President and the Vice-

President and three other members of the council who constituted as members of the disciplinary committee, was also members. Their Lordships

held as under:

Accordingly, the finding of the council holding the respondent members guilty of misconduct was vitiated by the participation of the members of

the Disciplinary committee.

This was on the basis of the Principle of apprehension of a bias. Their Lordships observed in the case of Manek Lal v. Prem Chand reported

in AIR 1957 SC 425 wherein it was observed:

It is well settled that every member of a tribunal that is called upon to try issue 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. Similarly in the judicial review of the

administrative action by Professor S.A. de Smith has also observed:

a report will normally include a statement of findings and recommendations, which may be controverted before the parent body; and in such a

case, the participation of members of the sub-committee in the final decision may be of dubious validity. The problem is not merely one of strict

law; it is also one of public policy. Similarly, in the case of Pinochet Ugarte No.2, reported in 1999 (1) All ER 577 (HL), it was observed that a

judge is automatically disqualified from hearing a matter in which he has a pecuniary interest in the outcome as also when the decision would lead to

promotion of a cause in which he is involved, together with one of the parties.

Similarly, in the case of Amar Nath Chowdhury v. Braithwaite & Co. Ltd. reported in 2002 (2)SCC 290 it was observed that Managing

Director dismissing an employee cannot sit in the Board of Directors to hear the employee's appeal. Doctrine of necessity was inapplicable as the

Board could have delegated its appellate power to a committee.

Similarly in Sir Bloom-Cooper's Comment on "Bias in appeal", 2005 Public Law 225 in which he quotes at page 227 a very illuminating judgment

of Judge Jerome Frank in the case of Rt. J.P. Linhan Inc., (138 F20 650) a brief excerpt from which reads:

Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and

disinterestedness. If, however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one

has ever had a fair trial and no one ever will

It was observed in the Ninth edition of Administrative Law by H.W.R. Wade & C.F. Forsyth that Twentieth-century judges have generally

enforced the rule against bias in administrative proceedings no less strictly than their predecessors as exemplified by the following cases:

The mere presence of a non-member while a tribunal is deliberating is enough to invalidate the proceedings. Thus the proceedings of a Watch

Committee, hearing an appeal by a police sergeant against his dismissal by his chief constable, were fatally flawed by the presence of the chief

constable, whose mind was made up and who was in effect the respondent, during the committee's deliberations. For similar reasons the court

quashed the decision of a disciplinary committee which had consulted privately with the chief fire officer who had reported a fireman for

indiscipline.

7. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent

guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial

system in our country. The very fact is that the disciplinary committee who found the respondent(herein) guilty participated in decision making

process for finding the respondent(herein) guilty and to dismiss him from service is bias which is apparent & real. Consequently, the view taken by

the Division Bench of the High Court cannot be faulted.

17. In Financial Commissioner Punjab v. Harbhajan Singh (supra), the order passed by the Settlement Commissioner was set aside on the ground

that he cannot sit over his own earlier order as Settlement Officer.

18. In Suman Bala v. Union of India (supra) also, the appeal preferred by the appellant was heard by the same officer who was the Disciplinary

Authority which was held to be improper.

19. In the instant case, the Enquiry Officer had exonerated the petitioner from Articles I, II and III having not been proved against the petitioner.

However, as regards Article IV, it was stated to be partly proved. Mr. K. Ramalingam, Chairman, the Disciplinary Authority, differed with the

opinion of the Enquiry Officer and also by order dated 30.05.2006 imposed minor penalty of censure upon the petitioner. When the matter was

taken up in appeal, it was referred to the Sub-Committee comprising of 5 members, namely, Mr. K. Ramalingam, Chairman, Mr. P. Seth,

Member (OPS) and Mr. S.C. Chhatwal, Member (Fin.), H.S. Bains, Member (P&A) and A.K. Misra, Member (Plng). Mr. K. Ramalingam

being the Chairman, who was the Disciplinary Authority also headed the Sub-Committee which passed the order in appeal. The doctrine of

necessity as canvassed by learned counsel for the respondent is not available. As per Regulation 3(a) of the AAI Employees (Conduct, Discipline

and Appeal) Regulations, 2003, ""Appellate Authority"" in relation to a case means the authority specified in Column no. (iv) of the Schedule. As per

column (iv) of the Schedule, the Appellate Authority consists of Sub-Committee of Board of Airport Authority of India for all employees of

Groups A, B, C and D. For the sake of convenience, the relevant portion of Schedule is reproduced as under:

Disciplinary

Authority for (a)** Reviewing

S.No. Name of the post Appellate Authority

for penalties (b) Authority

Minor penalties

1. 2. 3. 4. 5.

Sub-Committee of

All employees (Group A.B, Board of Airports

1. Chairperson Board of Airports

C and D) Authority of India

Authority of India

20. As noticed above, as per Regulation 3(a) of the AAI Employees (Conduct, Discipline and Appeal) Regulation, 2003, ""Appellate Authority"" in

relation to a case means Sub-Committee of Board of Airport Authority of India. It is not explained as to what is the constitution of the Sub-

Committee of the Board. In any case, the Chairman being the Disciplinary Authority for imposition of major and minor penalties should have not

presided over the meeting of the Sub-Committee. The Board could have constituted a Sub-Committee by excluding the same Chairman and

delegated any of its powers, including the appellate power to such a committee to eliminate any allegation of bias against the said Appellate

Authority. Therefore, it cannot be said that the rule against bias is not available in the present case in view of Doctrine of Necessity. Things did not

end here. The petitioner preferred a review against the order in appeal dated 05.01.2007. However, the same was never forwarded to the Review

Authority. The petitioner was constrained to approach this Court by filing W.P.(C) No.5329/2007 which was disposed of with the direction to the

respondent No.1 to hear the representation of the petitioner as a review. Thereupon, the petitioner filed his representation before the review board

on 13.01.2009. One of the objections taken by him in the representation was regarding constitution of the review board and he had objected to

any person who was part of the Appellate Board to be a member of the Review Board. However, ignoring his objections, a sub-group comprising

of three persons, namely, Mr. K.K. Jha (Member P&A), Mr. S.C. Chhatwal, Member (Fin.) and P. Seth, Member (Ops.) Chairman of the Sub-

Group was formed. As noticed above, Mr. P. Seth and Mr. S.C. Chhatwal were part of the Sub-Committee which heard and decided the appeal

of the petitioner. This was against all canons of principles of natural justice.

21. To be fair to counsel for the petitioner, he had urged and argued that finding recorded by the enquiry officer and the reasoning given by the

disciplinary authority were inconsistent and perverse. The conclusions even on the precept of preponderance of probabilities, were unacceptable.

We have refrained from commenting on the said contention as we find that the petitioner is entitled to succeed on the alternative submission.

22. That being so, without going into the other submissions raised by learned counsel for the petitioner, the writ petition deserves to succeed.

Accordingly, the orders dated 08.12.2006 and 30.03.2009 passed by the Appellate Authority and the Review Board are set aside. Keeping in

view the fact that a minor penalty of censure was imposed upon the petitioner and the litigation is pending for the last about 7 years we do not

deem it appropriate to remit the matter again to the Appellate Authority for deciding the appeal of the petitioner afresh.

23. Learned counsel for the respondent submitted that only a minor penalty of censure was imposed upon the petitioner which has not adversely

affected him as sealed cover was opened on 30.05.2006 and he was promoted as Joint General Manager on 31.05.2008. This submission is

strongly contested by learned counsel for the petitioner by submitting that although a minor penalty of censure was imposed upon the petitioner,

however, the same has adversely affected his career as, as many as 13 people junior to him were promoted. The petitioner had been Deputy

General Manager since 01.01.1998, should have been made Additional General Manager on 01.01.2003 instead of Joint General Manager on

31.05.2006. He was eligible to be made Additional General Manager on 01.01.2003 and also eligible for the post of General Manager on the

same date. However, due to pendency of the departmental enquiry, the same were denied to him. He was entitled for promotion to the post of

General Manager when the vacancy arose around 15.07.2004. The petitioner in the year 2004 was senior most with more than the minimum

required eligibility, qualification and experience. Despite that due to pendency of the departmental proceedings, he was denied promotion as

General Manager. No sealed cover procedure as prescribed in Regulation 26 of AAI (Conduct, Discipline & Appeal) Regulations, 2003 was ever

followed in the case of the petitioner.

24. In view of the foregoing, we allow the present writ petition and set aside the orders dated 8th December, 2006 and 30th March, 2009 passed

by the Appellate Authority and the Review Board respectively. Consequently, the penalty of censure is set aside. The respondent no.1 is directed

to grant to the petitioner all consequential benefits including promotion and monetary benefits. Wherever seal cover procedure was followed

appropriate action and steps would be taken to open the seal cover procedure. If for any reason the seal cover procedure was not followed,

appropriate action and steps would be taken as required from the date the petitioner would be eligible for consideration of promotion. If required

necessary review DPC would also be held as per law.

25. Writ petition stands disposed of accordingly.