

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 537, 538, 539 & 540/2015 (D.B.)**

Shri Vilas S/o Maroti Guru.  
Aged about 55 years, Occ : Nil,  
R/o Near Panchayat Samitti's office,  
Aheri, Tq. & Distt. Gadchiroli.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Mantralaya, Tardeo, Mumbai 32.
- 2) Assistant Director, Health Services (Malaria)  
Nagpur Division, Mata Kacheri,  
Nagpur-440015.
- 3) Fileria Officer,  
National Fileria Control Squad.  
Dhanora, Distt. : Gadchiroli.

**Respondents**

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Shri S.A.Kalbande, Ld. counsel for the applicant.  
Shri H.K.Pande, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup> July 2022.**

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**With**

Shri Patru s/o Kawadu Pipare,  
Aged about years, Occ.: Nil,  
R/o Talodhi (Mokosa)  
Tq. & Dist. Gadchiroli

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Mantralaya, Tardeo, Mumbai.
- 2) Assistant Director, Health Services (Malaria)  
Nagpur Division, Mata Kacheri,  
Nagpur-440015.
- 3) Fileria Officer,  
National Fileria Control Squad.  
Dhanora, Distt. : Gadchiroli.

**Respondents**


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Shri S.A.Kalbande, Ld. counsel for the applicant.  
Shri H.K.Pande, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup> July 2022.**

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**With**

Shri Bhumayya s/o Malayya Kumari,  
Aged about 58 years, Occ. : Nil,  
R/o Permal, Ta. Aheri, Dist. Gadchiroli.

**Applicant.****Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Mantralaya, Tardeo, Mumbai.
- 2) Assistant Director, Health Services (Malaria)  
Nagpur Division, Mata Kacheri,  
Nagpur-440015.
- 3) Fileria Officer,  
National Fileria Control Squad.  
Dhanora, Distt. : Gadchiroli.

**Respondents**


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Shri S.A.Kalbande, Ld. counsel for the applicant.  
Shri H.K.Pande, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup> July 2022.**

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**With**

Shri Pocham Yellayya Madeshi,  
Aged about 59 years, Occ. : Nil,  
R/o Sironcha, Tq. & Dist. Gadchiroli.

**Applicant.****Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Mantralaya, Tardeo, Mumbai.
- 2) Assistant Director, Health Services (Malaria)  
Nagpur Division, Mata Kacheri,  
Nagpur-440015.
- 3) Fileria Officer,  
National Fileria Control Squad.  
Dhanora, Distt. : Gadchiroli.

**Respondents**


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Shri S.A.Kalbande, Ld. counsel for the applicant.  
Shri H.K.Pande, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 25<sup>th</sup> July 2022.**

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**Per :Member (J).**

**COMMON JUDGMENT**

**Judgment is reserved on 05<sup>nd</sup> July, 2022.**

**Judgment is pronounced on 25<sup>th</sup> July, 2022.**

Heard Shri S.A.Kalbande, learned counsel for the applicants and Shri H.K.Pande, learned P.O. for the Respondents.

2. These O.As. involve common points of facts and law. Hence, they are heard together, and are being disposed of by this common judgment.

3. Case of the applicants is as follows.

At the time of their initial appointment as Area Worker in Class IV category the applicants furnished their School Leaving Certificate. Their services were initially temporary. Then they were made permanent and absorbed as regular employees. They received a show cause notice dated 03.08.2001 alleging that they had furnished fake School Leaving Certificate to secure employment. They gave reply to the notice. Such notice was issued to six persons including these applicants. The applicants (and two others) were served with a joint charge sheet dated 31.05.2002. Departmental enquiry was conducted. Charges against the applicants were held to be proved. The disciplinary authority passed order of dismissal of the applicants on 16.03.2004. The appellate authority confirmed it on 04.05.2005.

Being aggrieved by the orders dated 16.03.2004 & 04.05.2005 the applicants (and one another) filed O.A.Nos. 312 to 316 of 2005 in this Tribunal. This Tribunal passed a common judgment dated 21.03.2012 (Annexure A-8) operative part of which is as under-

- A) *The impugned order of punishment of removal passed by the Disciplinary Authority dt.16/03/2004 is quashed and set aside. The order passed by the Appellate Authority confirming the order of the Disciplinary Authority is also quashed and set aside. The respondents are directed to reinstate the applicants forthwith to the post which they held prior to their removal from service by the impugned order.***
- B) *Liberty is granted to the respondents to hold a fresh inquiry touching the same charge from the stage of supply of the documents contained in Annexure-4 to the applicants and thereafter by recording evidence of witnesses afresh. The question of back wages is left open to be addressed by the Disciplinary Authority after conclusion of the fresh inquiry which we have permitted by this order. After conclusion of the inquiry. we permit the applicants to make appropriate***

***representation in regard to the back wages to the Disciplinary Authority and at that stage the Disciplinary Authority shall consider the applicants' prayer for grant of back wages and pass an order in accordance with law.***

***C) The O.As. are allowed and disposed of in above terms, however with no order as to costs.***

4. Regarding what happened after order dated 21.03.2012 was passed by this Tribunal, the applicants have given following chronology-

(1) By letter dated 23.03.2013 respondent no.3 intimated the applicants that enquiry against them would re-start (as per order dated 21.03.2012).

(2) On 23.07.2013 respondent no.3 i.e. Disciplinary Authority appointed Shri. B.M. Falke as Enquiry Officer, and himself as the Presenting Officer.

(3) On 08.10.2013 enquiry was held in Gadchiroli Office. Some documents mentioned in the charge sheet were supplied to the applicants.

(4) On 06.12.2013 eight witnesses were examined by the department. The applicants cross-examined them. Contents of all these statements were exactly the same.

(5) On 21.01.2014 the enquiry was held in Nagpur Office and four witnesses were examined. The applicants were not informed in advance about change of venue from Gadchiroli to Nagpur. Hence, they could not remain present and cross-examine these four witnesses.

(6) On 04.02.2014 the applicants submitted application/s that they be permitted to cross-examine these four witnesses. The Enquiry Officer did not even take this written request on record.

(7) On 07.03.2014 statements of the applicants were recorded purportedly under Rule 8(20) of the MCS (Discipline & Appeal) Rules, 1979 (hereinafter referred to as " The Rules " )

(8) On 11.04.2014 the Presenting Officer submitted written arguments.

(9) On 25.04.2014 the applicants submitted written arguments.

(10) On 13.08.2014 respondent no.3 supplied enquiry report to the applicants.

(11) On 13.09.2014 the applicants gave their reply to the enquiry report.

(12) Respondent no.3 passed order of dismissal of the applicants on 16.03.2014 without issuing show cause notice to them.

(13) On 28.05.2015 the appellate authority dismissed their appeals.

According to the applicants, for following reasons the enquiry re-started after order dated 21.03.2012 would stand vitiated-

A] The disciplinary authority i.e. respondent no.3 appointed himself as the Presenting Officer. This was in breach of Rule 8(5)(c) and Rule 8(6)(vi) of the Rules. Rule 8(5)(c) states –

**8. Procedure for imposing major penalties.-**

**(5) (a) XXX**

**(b) XXX**

**(c) Where the disciplinary authority appoints an inquiring authority it may, by an order, appoint a Government servant or a legal practitioner, to be known as the “Presenting Officer” to present the case in support of the articles of charge before the inquiring authority.**

Rule 8(6)(v) states –

**(6)The disciplinary authority shall where it is not the inquiring authority, forward to the inquiring authority-**

**(i) XXX**

**(ii) XXX**

**(iii) XXX**

**(iv) XXX**

**(v) a copy of the order appointing the Presenting Officer.**

B] Rules 8(16) & 8(17) were also breached by not supplying the documents and by not giving an opportunity to cross-

examine witnesses for the department to the applicants. Rule 8(16) reads as under-

***(16) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of, the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.***

Rule 8(17) reads as under-

***(17) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the***

*Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice :*

*Provided that no new evidence shall be permitted or called for or any witness shall be recalled to fill up any gap in the evidence unless there is an inherent lacuna or defect in the evidence which has been produced originally.*

C] Since the disciplinary authority himself was the Presenting Officer, he could not have acted in an unbiased manner.

D] No order was passed as required under Rule 12 of the Rules for conducting joint enquiry.

Rule 12 reads as under-

**12. Common proceedings.- (1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.**

**(2) Where the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in**

***a common proceeding may be made by the highest of such authorities with the consent of the others.***

***(3) Every order for taking disciplinary action in a common proceeding shall specify-***

***(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding ;***

***(ii) the penalties specified in Rule 5 which such disciplinary authority shall be competent to impose and ;***

***(iii) whether the procedure laid down in Rule 8 and Rule 9 or Rule 10 shall be followed in the proceeding.***

6. Reply of respondent no.3 is at pp.138 to 144. According to respondent no.3 the enquiry was conducted strictly as per Rule 8 of the Rules, principles of natural justice were scrupulously followed and hence no interference in the impugned orders is warranted.

7. It may be observed that reply of respondent no.3 is silent as to why the Disciplinary Authority i.e. respondent no.3 appointed himself as the Presenting Officer.

Rojnama of the enquiry proceeding pertaining to applicant Vilas Maroti Guru dated 08.10.2013 states –

हत्तीरोग अधिकारी राष्ट्रीय हत्तीरोग नियंत्रण पथक धानोरा-यांचे आदेश  
क्रमांक, हअ./रा.ह.नि.प./धानोरा/विभागीय पुर्नचौकशी/ /  
२०१३, दिनांक २३.०७.२०१३ अन्वये अपचारी श्री.व्ही.एम.गुरु-----  
क्षेत्रकार्यकर्ता-----यांचेवर ठेवण्यात आलेल्या आरोपांची

चौकशी करण्याकरीता सेवानिवृत्त प्रादेशिक विशेष अधिकारी, नागपूर म्हणजे माझी “चौकशी अधिकारी” म्हणून नियुक्ती करण्यात आली. तसेच याच आदेशान्वये श्री.बी.जे.राऊत, अवैद्यकीय आरोग्य अधिकारी, कार्यालय हत्तीरोग अधिकारी, रा.ह.नि.प. धानोरा यांची सादरकर्ता अधिकारी” म्हणून नियुक्ती करण्यात आली.

In all other connected enquiry proceedings identical order is passed.

8. According to learned Advocate for the applicants the Disciplinary Authority could not have appointed himself as the Presenting Officer in view of Rules 8(5)(C) & 8(6)(v). It was submitted that apart from these statutory Rules it would be apparent that by virtue of the Disciplinary Authority appointing himself as the Presenting Officer one cardinal principle of natural justice i.e. “ Rule against Bias “ was flagrantly breached.

On this point learned P.O. stated that since the Rules do not expressly prohibit Disciplinary Authority from acting as Presenting Officer, this circumstance will not, in any way, adversely affect legality of the enquiry.

9. The applicants have relied on-

1) **State of Maharashtra and Others Vs. Wasudeo Madhukarrao Pande [2021(5) Mh.L.J. page 364.** In this case it is held -

***9. Rule 8 of the D & A Rules lays down a detailed procedure to be followed by the Inquiry Officer, appointed to conduct inquiry into charges against a Government***

*employee in connection with disciplinary proceedings. Not only sub-rule (20) of Rule 8 but also the other provisions in the D & A Rules provide procedural safeguards as part of requirements of a 'fair hearing'. Reasonable opportunity of hearing is considered to be synonymous to 'fair hearing' and is an important ingredient of the rule of audi alteram partem. The rule of 'fair hearing', which embraces almost every facet of fair procedure, requires that the party proceeded against and who could be affected by reason of any final order passed in the proceedings, is given the opportunity to meet the case against him effectively. What this means is that reasonable and adequate opportunity to raise effective defence should be given to the party proceeded against or else the ultimate action of imposition of penalty based on such procedure which falls short of the requirements of a 'fair hearing' could be annulled if the procedural safeguards that the statutory rules envisage are not adhered to.*

- 2) *Sawai Singh Vs. State of Rajasthan (1986) 3 Supreme Court Cases 454.* In this case it is held-

*16. It has been observed by this Court in [Surath Chandra Chakrabarty v. State of West Bengal](#) that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of [State of Andhra Pradesh v. S. Sree Rama Rao](#) and as such there is no such rule that an offence is not established unless it is*

*proved beyond doubt. But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation.*

*17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See K.L. Tripathi v. State Bank of India ) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non.*

3) *Kashinath Dikshita Vs. Union Of India And others (1986) 3*

*Supreme Court Cases 229.* In this case it is held-

*When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity-to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case.*

4) *Murari Mohan Deb Appellant v. Secretary to the Govt. of India and others Respondents AIR 1985 Supreme Court 931.* In

this case it is held-

*The enquiry officer issued a notice that the enquiry against the appellant would be held at Rangamura but at short notice subsequently, the venue was suddenly shifted to Radhanagar where the appellant could not keep his witnesses present. He did not have an opportunity of examining the records used against him. Therefore, for more than one reason, the enquiry appears to have been held in violation of principles of natural justice and is vitiated. If the enquiry was illegal, any punishment imposed as a result of the enquiry must fail. Therefore, the order of*

*compulsory retirement is bad for more than one reason and liable to be set aside and is hereby set aside.*

5) *Manik Abas Jadhav Vs. Mira Bhayandar Municipal Corporation and Others 2019(2) Mh.L.J.] page 693* in this case it is held-

*Division Bench of this Court in the case of Gajanan Babu Patil vs. State of Maharashtra and others 2003(1) Mh.L.J.988 has observed thus :-*

*"8. The legal position that the disciplinary authority as also the appellate authority has to give reasoned order is always settled and has now been finally laid down by the Full Bench of this Court interpreting the provisions of Maharashtra Rules regarding conduct of departmental enquiry and proceedings. This Court has specifically laid down the manner in which the orders are to be passed. We introduced what has been laid down by the Full Bench. Suffice to say that the orders passed by the disciplinary authority as also the appellate authority are required to be speaking orders. As observed already the order of the disciplinary authority as also the appellate authority is not a speaking orders and consequently they are not sustainable in law. Even if it is assumed in favour of the respondent that the disciplinary authority itself being enquiring authority and it has given an enquiry*

*report holding the petitioner guilty, no additional reasons need be given in the order of punishment. In such a case, according to law, more responsibility lies on the earlier authority to give its finding on each point raised. The appellate court has totally failed to perform its duty. No reason has been given why the appeal of the Petitioner was dismissed. No reason is given to defend the insufficiency of evidence or absence of evidence. We therefore find it impossible to sustain the orders of punishment as passed by the authorities below. In the result therefore the petition succeeds and it is allowed."*

- 6) *State of Uttar Pradesh And Others Vs. Saroj Kumar Sinha (2010) 2 Supreme Court Cases 772.* In this case it is held-

*28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to*

*conclude that the charges have been proved against the respondents.*

*29. Apart from the above by virtue of [Article 311\(2\)](#) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.*

*30. When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.*

*31. In *Shaughnessy v. United States, (Jackson J)*, a judge of the United States Supreme Court has said: (L Ed p.969)*

*"...Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."*

***32. The effect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:***

***"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."***

10. As mentioned earlier, in the instant case the disciplinary authority i.e. respondent no.3 appointed himself as the Presenting Officer and proceeded to examine witnesses for the department to prove various charges levelled against the applicants. We find that this breaches one of the cardinal principles of natural justice i.e. "Rule against Bias. Rule 8(5)(c) of the Rules lays down that where the disciplinary authority appoints an inquiring authority it may, by an order, appoint a Government servant or a Legal Practitioner, to be

the “Presenting Officer” to present the case in support of the articles of charge before the inquiring authority. This Rule cannot be interpreted in a way so as to conclude that it does not prevent the Disciplinary Authority from appointing himself as the “Presenting Officer”.

In “ *State of Punjab Vs V.K.Khanna and Others AIR 2001 Supreme Court 343* it is held-

*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 therefor would not arise.*

Reliance may also be placed on “*Ratanlal Sharma Vs Managing Committee AIR 1993 Supreme Court 2155*. In this case the relevant facts were as under-

*There is no dispute as to the fact that the said Shri Maru Ram himself deposed in the enquiry proceeding in support of Charge No. 12 against the appellant and he also participated as one of the members of the Enquiry Committee. The Enquiry Committee found the appellant*

*guilty on some of the charges including the said charge No. 12. The Managing Committee proposed to dismiss the appellant from service.*

In this case it is further observed-

*Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russel v. Duke of Norfolk 1949 1 All ER 109 Tucker, L.J. observed:*

*"There are, in my view no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."*

*It has been observed by this Court in [Union of India v. P.K. Roy](#). [1968] 2 SCR 186 that "The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."*

*Similar view was also expressed in A.K Kraipak's case (ibid).*

*This Court observed:*

*"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 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."*

*Prof. Wade in his Administrative Law has succinctly summarised the principles of natural justice to the following effect:*

*"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant: there is no such thing as a merely technical*

*infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."*

*One of the cardinal principles of natural justice is : Nemo debet esse judex in propria causa (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias, It has been held by this Court in [Secretary to Government Transport Department v. Munuswamy](#) [1988] Suppl SCC 651 that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in state of [U.P. v. Mohd. Nooh](#) [1988] SCR 595. In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.*

*(Emphasis supplied)*

In the instant case after order was passed by this Tribunal in the batch of original applications on 21.03.2012, respondent no.3 appointed himself as the Presenting Officer and proceeded to examine witnesses for the department. As per order dated 21.03.2012 liberty was granted to the respondents/department to hold a fresh enquiry touching the same charge from the stage of supply of the documents contained in Annexure A-4 to the applicants and thereafter by recording evidence of witnesses afresh. In the enquiry which commenced afresh pursuant to order dated 21.03.2012 respondent no.3, the Disciplinary Authority himself took over as the Presenting Officer. He could not have obviously proceeded with the enquiry in an un-biased manner. Thus, this second round of enquiry also stood vitiated since inception .

We have referred to contention of the applicants about breach of Rule 12. We have quoted this Rule. The language in which it is couched shows that it is mandatory. We have gone through the record of enquiry. There is absolutely nothing on record to show that the procedure stipulated under Rule 12 was followed. This breach would render the enquiry invalid ab-initio.

11. It is apparent on record that the applicants have crossed the age of superannuation. However, considering serious nature of

charge i.e. procuring employment by furnishing fake certificates, we have come to the conclusion that one more opportunity needs to be given to the department to conduct proper enquiry by strictly adhering to principles of natural justice and the relevant Rules. Hence, the order.

### **ORDER**

The impugned orders dated 24.03.2015 & 28.05.2015 (Annexures A-1 & A-2, respectively) are quashed and set aside.

Liberty is granted to the respondents to hold a fresh enquiry touching the same charges from the stage of passing necessary order under Rule 12 and then proceed further in accordance with Rules.

Fresh enquiry directed by this order shall be concluded within nine months from the date of this order.

The question of back wages is left open to be decided by the Disciplinary Authority after conclusion of enquiry which we have permitted by this order. After conclusion of enquiry the applicants shall be at liberty to make appropriate representation to the Disciplinary Authority for grant of back wages whereupon the Disciplinary Authority shall pass appropriate order in this behalf in accordance with law.

The Original applications are allowed in the aforesaid terms  
with no order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 25/07/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 25/07/2022.  
and pronounced on  
Uploaded on : 25/07/2022.