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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL No. 245 OF 2007**

Biecco Lawrie Ltd. & Anr. …Appellants

**Versus**

State of West Bengal & Anr. …Respondents

**J U D G M E N T**

**TARUN CHATERJEE, J.**

1. The judgment and order dated 30th of September, 2005 passed by a Division Bench of the Calcutta High Court affirming the judgment and order dated 4th of October, 2004 of a learned Judge of the same High Court and the order dated 31st of October, 2003 of the Vth Industrial Tribunal, West Bengal is under challenge before us at the instance of Biecco Lawrie Ltd. and another, the appellants herein.

2. By the order of Vth Industrial Tribunal, West Bengal, dated 31st of October, 2003, the order of dismissal passed by the appellants

against Provash Chandra Mondal – respondent No.2 [hereinafter referred to as the 'respondent'] was set aside.

3. The respondent was appointed as general mazdoor in the Switch Gear works of the appellants and his duty, inter alia, was to bring materials from the shop rack to the working benches and afterwards to take them to their respective racks. On 4th of August 1984, a charge sheet was issued against the respondent on charges of major misconduct, namely, instigation, insubordination and using of abusive and filthy languages against his superiors and dilatory tactics, which are major misdemeanor in terms of Section "L" Appendix "D" of the certified standing orders of the appellant-Company, which are reproduced below:

**Appendix "D" Clause (2)** ***Major Misdemeanor***

(i) Willful insubordination or disobedience of any lawful and reasonable order of a superior,

(iv) Willful slowing down in performance of work

(xi) Commission of any act subversive of good behavior or of the discipline of the company

(xxix) Instigation, incitement, abetment or furtherance of the forgoing punishable as major misdemeanor

4. By the charge sheet, the respondent was called upon to submit his explanation and he was suspended from service with payment of subsistence allowance pending inquiry. The respondent filed his written explanation on 6th of August, 1984 to the charge sheet which being found unsatisfactory, an inquiry committee was constituted with Mr. P.K.Mukherjee (the company lawyer) as the Inquiry Officer who submitted his report on 29th of August, 1985 following domestic inquiry and held that the respondent was guilty of major misconduct. Accordingly, relying upon the inquiry report, the respondent was dismissed from service. The respondent through a letter dated 22nd of November, 1985 admitted all the charges and sought condonation and mercy attributing his acts to his mental illness which was not considered by the appellants on account that the respondent was on earlier occasion also charged with similar grounds and was given a chance to amend his conduct. It was alleged by the appellants that the respondent had developed a habit of misconducting himself in an undesirable manner despite opportunities being given to rectify his conduct.

5. Subsequent to this, the dispute was referred under Section 7A of the Industrial Disputes Act on 2nd of April, 1987 by the Labour Department, Government of West Bengal to the Vth Industrial Tribunal, West Bengal for adjudication. Both the parties filed their written statements presenting their cases before the Tribunal and on 9th of October, 1990 the Tribunal held that the inquiry conducted by Mr. P. K. Mukheree, the Inquiry Officer, was in violation of the principles of natural justice and accordingly the matter was heard afresh on merits. The witnesses of the appellants were examined and cross examined. The respondent was also examined and cross examined. In course of examination of the witnesses of the appellants, a witness specifically mentioned the abusive and slang language used by the respondent which was recorded in vernacular. These witnesses were also examined by the respondent. The Vth Industrial Tribunal, on consideration of the Inquiry Report and evidence on record, affirmed the order of dismissal passed against the respondent and gave a reasoned order whereby it specifically found the charges leveled against the respondent deemed to have been proved and while doing so had also taken into consideration the prior conduct of the respondent. The respondent challenged the order

of the Tribunal before the High Court by filing a writ petition and by an order dated 12th of October 1999, the order of the Tribunal was set aside and the matter was remitted back to the Tribunal for reconsideration on the basis of existing evidence but only with respect to charge no. 1, viz., disobedient in not carrying out the orders of his superiors.

6. Pursuant to the order of the High Court, after remand, the Vth Industrial Tribunal heard the matter on the basis of the same evidence on record and by an order dated 31st of October 2003 held that the respondent was illegally terminated by the appellants and the dismissal order was not justified and hence liable to be set aside. It also directed the reinstatement of the respondent with full back wages. The Tribunal held that the appellant had failed to establish by cogent evidence that the respondent had developed the habit of being negligent in his duties and using abusive language. It was further held that the charge sheet had not disclosed the specific abusive language used by the respondent and without recording such language, the charge sheet was bad.

7. The appellants subsequently challenged the aforesaid order of the V$^{th}$ Industrial Tribunal by filing a writ petition before the High Court which was dismissed on 4$^{th}$ of October, 2004 without assigning any reasons of its own. It passed the order on the basis of the findings of the Tribunal and held that the court in exercise of its jurisdiction was not authorised to re-appreciate the findings of the Tribunal. Feeling aggrieved, the appellants preferred an appeal before a Division Bench of the High Court which also dismissed the same on 30$^{th}$ of September, 2005 affirming the order of the learned Single Judge on a finding that the charge sheet did not contain the specific materials in detail. Feeling aggrieved by the Order of the High Court, the appellants have filed these special leave petitions which, on grant of leave, were heard in the presence of the learned counsel for the parties.



8. The pivotal questions that need to be considered by us are as follows:

a. Whether the principles of natural justice have been violated?

b. Whether the dismissal is vitiated by the same and is thus bad and unjustified?

c. Whether the tribunal was justified in reversing its own decision subsequently when there had been no further evidence adduced?

d. Whether the High Court was right in their appreciation of evidence and exercising power in the matter of interfering with the order of dismissal?

9. We have heard the learned counsel for both the parties and also examined the impugned order of the Division Bench as well as the orders of the learned Single Judge of the High Court and also of the Industrial Tribunal setting aside the order of dismissal passed against the respondent and other materials on record including the orders passed by the High Court as well as the tribunal in earlier matters by which the High Court had sent back the case for re-hearing. At the first instance, the learned counsel for the appellants strongly argued that there was perversity and illegality involved in the decision rendered by the Tribunal which was affirmed by the High Court. It was also argued on behalf of the appellants that a fair and reasonable opportunity of hearing was afforded to the respondent and the charge sheet did not suffer any discrepancy as it sufficiently

enabled the respondent to defend his case. Furthermore, it was contended that the charges framed were not vague or unintelligible and were serious cases of misconduct. It was further argued that the Tribunal and the High Court had appreciated the evidence wrongly and it would not be in the interest of appellant-company to keep a workman who has developed the habit of abusing superiors with filthy language and disobeying their orders. Accordingly, the learned counsel for the appellants prayed for setting aside the judgment of the High Court as well as of the Industrial Tribunal and restoration of the order of dismissal passed against the respondent.

10. Submissions made by the learned counsel for the appellants were strongly contested by the learned counsel appearing on behalf of the respondent.

11. The learned counsel for the respondent contended that the respondent was denied a fair hearing and was dismissed in violations of the principles of natural justice. It was argued on behalf of the respondent that the charge sheet did not contain the specific abusive language and thus it was difficult for him to defend his case. He

further argued that the respondent was not furnished with the list of witnesses and copy of the documents to be treated as evidences and materials on which the management was to rely and he was also denied a chance of being represented by a lawyer or a representative who is equipped with legal background during the enquiry proceedings. Learned counsel for the respondent also contended that the appellants had not presented before the court any documentary evidence to prove that he had on earlier occasion misconducted himself and was thus in a habit of disobeying his superiors. The learned counsel also strongly argued that the work assigned to the respondent was not part of his duty as he was appointed to carry things from one place to another outside the shop and not to fix the top planks on the braker stand. Finally, the learned counsel for the respondent argued that since the concurrent findings of fact arrived at on the question formulated hereinabove, it is not open to this Court to exercise its discretionary power under Article 136 of the Constitution to interfere with the impugned order on such concurrent findings of fact.

12. Let us first delve into the most crucial question raised in this appeal, i.e. : whether there was violation of principle of natural justice. Principle of natural justice is attracted whenever a person suffers a civil consequence or a prejudice is caused to him by an administrative action. In other words principle of natural justice is attracted where there is some right which is likely to be affected by any act of the administration including a legitimate expectation. (See: ***Ashoka Smokeless Coal India (P) Ltd.*** **v.** ***Union of India & Ors.[***(2007) 2 SCC 640] The procedure to be followed is not a matter of secondary importance and in the broadest sense natural justice simply indicates the sense of what is right and wrong (***Voinet*** **v.** ***Barrett*** (1885) 55 LJQB 39) and even in its technical sense it is now often equated with fairness. As a well-defined concept, it comprises of two fundamental rules of fair procedure that- a man may not be a judge in his own cause (*nemo judex in re sua)* and that a man's defence must always be fairly heard. Judgments dealing with the administrative decisions proceed on the footing that the presence of bias means the tribunal is improperly constituted so that it has no power to determine or decide the case and accordingly its decision must be void and a nullity. Generally the courts pass a declaratory

judgment stating that the award is a nullity and secondly they may send it back to the authority to decide the matter afresh. The instant case might appear to be a case of departmental bias as it is persistently lodged by the respondent that the Enquiry Officer was biased being a company lawyer and had favoured the company in causing miscarriage of justice. Departmental bias arises when the functions of a Judge and the prosecutor are combined in the same department as it is not uncommon to find that the same department which initiates the matter also decides it, therefore, at times, department fraternity and loyalty militates against the concept of fair hearing. In ***Hari Khemu Gawali v. The Deputy Commissioner of Police*** *[*AIR 1956 SC 559] an externment order was challenged on the ground that since the police department which heard and decided the case was the same, the element of departmental bias vitiated administrative action and this Court rejected the challenge on the ground that so long as two functions (initiation and decision) were discharged by two separate officers, though they were affiliated to the same department, there was no bias. In ***The General Secretary, South Indian Cashew Factories Workers' Union v. The Managing Director, Kerala State Cashew Development Corporation Ltd.***

***and Ors.*** **[**(2006) 5 SCC 201], it was held that the inquiry had been conducted by the Assistant Personnel Manager of the Corporation and the Union raised an industrial dispute in which Labour Court set aside the inquiry on the ground of institutional bias as the Enquiry Officer was part of the same institution and had also made certain uncorroborated remarks against the employee. This Court in appeal held that mere presumption of bias cannot be sustained on the sole ground that the officer was a part of the management and where findings of the Enquiry Officer were based on evidence and were not perverse, the mere fact that the inquiry was conducted by an officer of the management would not vitiate the inquiry. On a bare perusal of these decided cases, it could be strongly established that the fact that P.K.Mukherjee, the Enquiry Officer, who was also the company lawyer cannot be considered as being "biased and partisan" who favoured and was partial towards the management of the company.

13. It is fundamental to fair procedure that both sides should be heard – *audi alteram partem,* i.e., hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the

essential ingredients of fair hearing is that a person should be served with a proper notice, i.e., a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following: (a) time, place and nature of hearing; (b) legal authority under which hearing is to be held; (c) statement of specific charges which a person has to meet. However in ***The State of Karnataka & Anr.*** **v.** ***Mangalore University Non-Teaching Employee's Association & Ors. [***(2002) 3 SCC 302] the requirement of notice will not be insisted upon as a mere technical formality when the party concerned clearly knows the case against him and is not thereby prejudiced in any manner in putting up an effective defence, then violation of the principle of natural justice cannot be insisted upon. In the present case, the materials on record show that the respondent had been furnished with proper notices intimating him the date, time and place of hearing well before time and the respondent has also received notices as is

indicated from the postal acknowledgements made by him in his own letters addressed to the management.

14. It was made the major bone of contention that the charge sheet was bad as it did not mention specifically the abusive language used by the respondent. In this connection, reliance can be placed on a decision of this Court in ***Punjab National Bank Ltd.*** v. ***Their Workmen*** **[**(1959) 2 LLJ 666 (SC)] wherein it was held that before the management could dismiss its workman, it must hold a proper domestic enquiry into the alleged misconduct of such a workman and such an enquiry must begin with the supply of a specific charge sheet to him. In the instant case, on a perusal of the charge sheet it is evident that the charges laid down are precise and specific in nature along with the relevant provision of the standing order and neatly lays down the consequences thereof. We do not also find from the said charge sheet that there was any patent or latent vagueness involved and they are unintelligible. This is clearly evident from the explanation furnished by the respondent dated 6th of August, 1984 where he clearly denied all the charges and also mentioned the name of the four appellant-witnesses who were examined in the enquiry

proceedings subsequently. This is a clear indication that the respondent was fully aware of the charges and even their specifications and also the probable witnesses for his misconduct and hence the entire plea falls flat on the face of it.

15. A proper hearing must always take in its ambit a fair opportunity to those who are parties in the controversy for correcting or contradicting anything that is prejudicial to their view. Lord Denning has observed the following in ***Kanda* v. *Government of Malaya*** [1962] AC 322 –

> " *If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict him.*"

Thus every person before the administrative authority exercising adjudicatory powers has the right to know the evidence to be used and this was firmly established in the case of ***Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax*** **[**AIR 1955 SC 65]. It is, however, very well accepted principle that supply of the adverse

material need not be, unless the law otherwise provides, in its original form and it is sufficient if the summary of the contents of the material is supplied provided it is not misleading. Thus, what is essential is substantial fairness and this may be in many situations be adequately addressed and achieved by telling the affected party the substance of the case that he has to meet, without precisely discussing the precise evidence or the sources of information. The respondent has been provided with various chances to present his case before the Enquiry Officer and also present evidence that he could do to justify his defence. Further the respondent cannot claim that he is unaware of the broad charges framed against him and the witnesses against him due to the reasons stated earlier in the preceding paragraph.

16. Fair hearing also calls for a right to rebut any evidence that necessarily involves essentially two factors namely – (a) cross examination; and (b) legal representation (***State of J & K*** vs. ***Bakshi Ghulam Mohammed*** **[**AIR 1967 SC 122]. In ***S.C .Girotra*** vs. ***United Commercial Bank*** **[**(1996) 2 LLJ 10], the Bank obtained certain reports prepared on which the charges were based and these reports were submitted by bank officers who were examined by the

Enquiry Officer. On the basis of the report an employee was dismissed and the court held that there was violation of the principles of natural justice as the employee was not allowed to cross-examine the officers who deposed orally before the Inquiry Officer. In the present case, the Inquiry Officer had sent due notice and postponed the date of hearing various times with an intention to permit the respondent to present his case, nevertheless the respondent did not present himself except on three days and ultimately the Enquiry Officer conducted the inquiry *ex parte.* Therefore, this was not a case where the respondent was not afforded a chance to cross examine the witnesses done by the prosecution witnesses rather it seems to be a case where the respondent, had waived his right to cross examine by absenting himself from the inquiry on the grounds that he was not permitted legal representation nor was furnished with the documents or list of evidences upon which the management was relying. In ***Kalindi*** & Ors. v. ***Tata Locomotive & Engg.Co.Ltd***. [AIR 1960 SC 914], this court held that a representation through a lawyer in any administrative proceeding is not considered as an indispensable part of natural justice as oral hearing is not included in the minima of fair hearing. To what extent it is allowed depends upon

the provisions of the statute, like the Factories Law does not permit it whilst Industrial Disputes Act allows it with the permission of the Tribunal. In ***Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi*** **[**(1993) 2 SCC 115], this Court held that right to legal representation through a lawyer or agent of choice may be restricted by a standing order also and it would amount to denial of natural justice. Further more in the case of ***Harinarayan Srivastava v. United Commercial Bank and Another*** [(1997) LLR 497 (SC)], this Court again held that refusal of Inquiry Officer to permit representation by an advocate even when the management was being represented by a law graduate will not be violative of the principles of natural justice if the charges are simple and not complicated. In this case, the respondent had based his case firmly on the fact that he was denied legal representation but nonetheless he could have resorted the help of a friend who could have presented his case or the registered Union could have very well taken up the matter of the concerned workman. The High Court had decided on the fact that the management was represented by a person who was a commerce graduate and passed the diploma course of social welfare who even though was not a lawyer, yet was a legally trained

person and thus there was violation of the principles of natural justice, which this court believes is untenable as the respondent would have sought permission from the tribunal or would have asked help from the registered trade union. We are, therefore, of the opinion that the charges were specific and simple and not difficult to comprehend. Assuming but not admitting that there has been a denial of the principles of natural justice to the respondent to the extent that he did not know the specifications of the charges leveled, was denied a right to engage a lawyer and not furnished with the copies of the documents and list of witnesses to be relied upon by the management, even then, we are of the firm opinion that observance of the principles of natural justice to the respondent would be a useless formality which is an exception to the rationale underlying the principles of natural justice. In ***S.L. Kapoor vs. Jagmohan*** & Ors. [(1980) 4 SCC 379], this Court under similar circumstances dealing with the denial of the principles of natural justice held that –

> "*it is yet another exception to the application of the principles of natural justice. Where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the court may not insist on the observance of the principles of natural justice because it would be futile to order its observance*."

17. In ***Karnataka SRTC vs. S.G.Kotturappa***, [(2005) 3 SCC 409], this Court again observed as follows-

> " *where the respondent had committed repeated acts of misconduct and had also accepted minor punishment he is not entitled to the principles on natural justice as it would be a mere formality, that too misconduct in the case of a daily wager. The question as to what extent principles of natural justice are required to be complied within a particular case would depend upon the factual situation obtained in each case and the principles cannot be applied in a vacuum. They cannot be put in a straight jacket formula*."

In the present case, in the letter dated 22nd of November, 1985, the respondent had admitted all the charges and had stated unequivocally that his behavior was due to mental sickness and prayed for sympathy and mercy. This along with the fact that the respondent was earlier charged on similar grounds and dismissed but, on his request, was exonerated and given a chance to amend his conduct also goes a long way to project the fact that observance of the principles of natural justice would be merely a useless formality since he had admitted the charges against him. The High Court found that a poor workman in such a situation would be left with no

option but to seek sympathy by accepting the allegations raised and praying for mercy. But we are of the opinion that it is too far fetched an imagination of the High Court, adhering to the belief that these are the erstwhile time preceding industrial revolution where the employer was the God and the employee was the slave.

18. At this juncture it is important to mention that this would be a futile, elongated and over stretched exercise to decide on the matter on the ground that whether the inquiry report is vitiated by the violation of the principles of natural justice. The Single Judge as well as the Division Bench of the High Court had failed miserably to perceive that on 9th of October, 1990, the tribunal deciding upon the validity of the inquiry proceedings held that it had violated the principles of natural justice and subsequently for a span of 31 months the tribunal dealt with the matter afresh, examined and cross examined both the parties and their witnesses and came to the conclusion, on basis of reasons and evidence, that the respondent was guilty of the charges. At that point, the respondent was fully aware of the charges, the specific abusive languages used, the witnesses present and had been afforded every opportunity to defend

his case in the most desirable manner. Yet the High Court kept on reverting back and adjudicating upon the validity of the inquiry conducted and its report resulting into a dismissal order which is nothing but a sheer wastage of time and understanding. So the question only remains that whether the award of the tribunal dated 30th of March, 1994 upholding the dismissal was valid or not? and secondly, whether the High Court was justified in interfering with the decision and quashing and remanding it back to the tribunal for reconsideration?

19. While dealing with the domestic inquiry and misbehaviour by an employee at one inquiry and refusal to attend the next inquiry, this Court in ***Management of M/s. Eastern Electric & Trading Co.*** *vs.* ***Baldev Lal*** [(1975) 4 SCC 684] observed that the misbehaviour by an employee at one inquiry and refusal to attend the next inquiry held even after adjournment if the employee did not appear in the domestic inquiry, the ex parte inquiry held by the Inquiry Officer cannot be vitiated and must be held to be valid.

20. In ***The Chartered Bank, Bombay vs. The Chartered Bank Employees' Union*** [1960 (3) SCR 441], this Court observed that the tribunal or the court can interfere with the decision of the management and industrial adjudication and it would be entitled to examine the substance of the matter and decide whether the termination was in fact discharge simpliciter. If the Industrial court is satisfied that the order of discharge is punitive in nature, that it is mala fide, or that it amounts to victimization or unfair labour practice, the court or the industrial tribunal is competent to set aside the order of dismissal issued by the management and direct reinstatement of the employee.

21. Similar is the view expressed in ***The Tata Oil Mills Co. Ltd. Vs. Workmen & Anr.*** [1964 (2) SCR 125]. This Court observed in the matter of order of discharge of an employee the form of the order is not decisive. It further observed that an Industrial Tribunal has jurisdiction to examine the substance of the matter and decide whether the termination is in fact discharge simpliciter or it amounts to dismissal which has put on the cloak of discharge simpliciter. It was further observed that the test always has to be whether the act of

the employer is bona fide or whether it is a mala fide and colourable exercise of the powers conferred by the terms of contract or by the standing orders. However, in some cases, the termination of the employee's services may appear to the industrial court to be capricious or so unreasonably severe that an interference may legitimately and reasonably be drawn that in terminating services, the employer was not acting bona fide and the test always has to be whether the act of the employer is bona fide or not. This test has been reiterated and applied in cases like ***Tata Engineering & Locomotive Company Ltd. v. S.C.Prasad [***(1969) 2 LLJ 799], ***L.Michael Ltd. v. M/s Johnson Pumps Ltd***.[AIR 1975 SC 661], ***Gujarat Steel Tubes v. Gujarat Steel Tubes Mazdoor Sangh*** [(1980) 1 LLJ 137 (SC)].



22. Moreover, in our view, the punishment was not harsh in comparison to the charges leveled against the respondent. In this connection, reference can be made to a decision of this Court in ***UP State Road Transport Corpn. v. Subhash Chandra Sharma and Others*** [AIR 2000 SC 1163]. Here the charge against the respondent was that he in a drunken state along with the conductor went to the

Assistant Cashier in the cash room of the appellant and demanded money from him. When the Assistant cashier refused, the respondent abused him and threatened to assault him. On these facts, this Court observed as follows –

> "*It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."*

Similarly in ***L.K.Verma v. H.M.T. Ltd*** (2006) LLR 296 (SC), it was observed that –

> " *as regards the quantum of the punishment is concerned suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal. Once the appellant accepted that he had made utterances which admittedly lack civility and he also threatened a superior officer it was for him to show that he later on felt remorse therefore and should have tendered an apology*".

23. From a perusal of these observations, made in the aforesaid decisions of this Court as noted herein above, it is crystal clear that the general trend of judicial decisions is to minimize the interference when the punishment is not harsh and definitely for charges that are leveled against the respondent and in the instant matter, dismissal is absolutely not shocking to the conscience of the court.

24. The learned Single Judge also misused the power vested in him by remanding back the matter to the industrial tribunal for reconsideration when the charges were found to be proved. The tribunal also erred in reversing its own decision on the same evidence for which we fail to see as to how the same forum can appreciate the same evidence differently. The arguments advanced by the respondent that there was violation of the principles of natural justice does not stand true and if it does it was duly redressed by the fresh inquiry conducted by the tribunal after its order dated 9th of October, 1990.

25. The argument that the work assigned to the respondent was not a part of his job even, if accepted does not entitle him to abuse

his superiors and create an unhealthy atmosphere where the remaining might just take a clue from the unruly behaviour and subsequently use it to the detriment of the company. Further the letter by which he accepted all the charges sets up a strong proof against the respondent beyond which nothing remains to be analyzed.

26. In view of our discussions made herein above, we are of the view that the impugned judgment and order of the Division Bench of the High Court as well as of the learned Single Judge are liable to be set aside and the order of dismissal passed against the respondent herein must be restored. Accordingly, this appeal is allowed. There will be no order as to costs.



……J.
[TARUN CHATTERJEE]

New Delhi;
July 28, 2009.

……J.
[HARJIT SINGH BEDI]