

CASE NO.:
Appeal (civil) 193 of 2002

PETITIONER:
AMAR NATH CHOWDHURY

Vs.

RESPONDENT:
BRAITHWAITE AND COMPANY LTD. & ORS.

DATE OF JUDGMENT: 11/01/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

V.N. KHARE, J.

Leave granted.

The appellant herein was an employee of the Braithwaite and Company Limited, Calcutta, a Government of India Undertaking (hereinafter referred to as 'the Company'). It appears that certain misconduct committed by the appellant came to the notice of the Company. With the result, the Company decided to initiate disciplinary proceedings against the appellant, herein. Consequently, the appellant was served with a charge-sheet to which he gave an explanation. An Inquiry Committee constituted for that purpose after making an enquiry, found that the charges levelled against the appellant proved. The Inquiry Committee accordingly submitted its report to the Disciplinary Authority. The Disciplinary Authority, who was the then Chairman-cum-Managing Director of the Company accepted the report submitted by the Inquiry Committee and he, by order dated 13.2.84, removed the appellant from service.

Under the regulations framed by the Company, an appeal against an order of the Disciplinary Authority lies before the Board of Directors of the Company (hereinafter referred to as the 'Board'). The appellant preferred an appeal against the order of his removal from service before the Board. It is not disputed that Shri S.Krishnaswami, who was then the Chairman-cum-Managing Director of the Company and who, in his capacity as the Disciplinary Authority, removed the appellant from service presided over and participated in the deliberations of the meeting of the Board. The Board by order dated 31.8.84, dismissed the appeal filed by the appellant by a non-speaking order. Aggrieved, the appellant filed a writ petition under

Article 226 of the Constitution of India before the Calcutta High Court. A Learned Single Judge of the High Court after having found defect in the proceedings, set aside the order of removal passed against the appellant. The Company filed a Letters Patent Appeal before a Division Bench of the High Court. The Division Bench found the order and judgment of the Learned Single Judge as erroneous and in that view of the matter, the order passed by the Learned Single Judge was set aside and the writ petition filed by the appellant stood dismissed.

It is against the said judgment and order of the High Court, the appellant has preferred this appeal.

This Court while entertaining the special leave petition out of which the present appeal arises, passed the following order:

"Issue notice confined to the question as to why the case may not be remanded to the appellate authority."

One of the arguments raised by Shri P.P. Rao, learned senior counsel appearing on behalf of the appellant, is that the order of removal having been passed by the Disciplinary Authority

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

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 vs. 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.

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."

In view of the aforesaid definition of the expression 'Board', the Board could have constituted a committee of the Board/Management or any officers of the Company by excluding Chairman-cum-Managing Director of the Company and delegated any of its power, including the appellate power, to the such a committee to eliminate any allegation of bias against such an appellate authority. It is, therefore, not correct to contend that rule against bias is not available in the present case in view of the 'doctrine of necessity'. We are, therefore, of the view that reliance of the doctrine of necessity in the present case is totally misplaced.

For the reasons stated hereinbefore, we find that the appeal deserves to succeed. Accordingly, the order and judgment under challenge as well as the order passed by the Appellate Authority are set aside and the matter is sent back to the Appellate Authority to decide the app

eal by a speaking order, in accordance with law. Before we part with the case, we further direct that the Company shall not take any step to realise any money which has been paid to the appellant on his superannuation till the matter is finally decided by the appropriate Appellate Authority.

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

.....J.
(V. N. Khare)

.....J.
(Ashok Bhan)

January 11, 2002

JUDIS