BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

------ Chairman

Hon'ble Mr. D.K.Kotia

-------Vice Chairman (A)

CLAIM PETITION NO. 67/2011

Chandramohan Singh Bhandari, aged about 35 Years, S/o Late Sri Madan Singh Bhandari R/o Village & Post Baabai, District Rudraprayag.

VERSUS

1. State of Uttarakhand through Secretary, (Transport) Secretariat, Subhash Road, Dehradun.
2. Chairman, Uttarakhand Transport Corporation, Indranagar, Dehradun..
3. Managing Director (Karmik), Uttarakhand Transport Corporation, Head Office 117 Indranagar, Dehradun.
4. Divisional Manager (Operation) Uttarakhand Transport Corporation, Indranagar, Dehradun.

…….Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondent No. 1.
Sri Inderjeet Singh, Counsel
for Respondent Nos. 2, 3 & 4.

JUDGMENT

DATED: NOVEMBER 3, 2014.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. This petition has been filed by the petitioner for following relief:-

"यह कि याचिका में उल्लिखित तथ्यों एवं कारणों के आधार पर सविनय निवेदन है कि माननीय न्यायाधिकरण याची को संबंधित विपक्षीगणों से निम्नलिखित उपचार दिलाने का आदेश व निर्देष पारित करने की कृपा करें:–

अ: यह कि विपक्षी सं0 4 द्वारा पारित दण्डादेश दिनांक 24–05–2007 याचिका का संलग्नक –1 व विपक्षी सं0 3 के अपीलीय आदेश दिनांक 31–10–2009 याचिका का

संलग्नक –2 तथा विपक्षी सं0 2 के पुनरीक्षण आदेश दिनांक 28–2–2011 याचिका का संलग्नक –11 को विधि विरूद्व व शून्य घोषित करते हुए निरस्त करने की कृपा करें ।

बः यह कि याची को निरन्तर सेवा में मानते हुए समस्त पारिणामिक लाभों सहित जैसे वेतन, वरिष्ठता, पदोन्नति आदि सेवा समाप्ति के आदेश की तिथि से पुर्नःस्थापित करने का आदेश सम्बनधित विपक्षीगणों के विरूद्व पारित करने की कृपा करें ।

सः यह कि निलम्बन काल का अवशेष वेतन याची को विपक्षीगणों से दिलाया जाये ।

दः यह कि अन्य उपचार जो माननीय न्यायाधिकरण इस याचिका के विचारोपरान्त उचित समझे, उन्हें भी दिलाने का आदेश व निर्देश सम्बनधित विपक्षीगणों के विरूद्व पारित करने की कृपा करें ।

यः यह कि इस याचिका का समस्त व्यय दिलाया जाये।"

2. This petition has been filed by the petitioner, Conductor of Bus No. UA07-0655 of Uttarakhand Transport Corporation Ltd. plying on the route of Haridwar to Bhatbari on 10.03.2007. The inspection team comprising of Divisional General Manager, Enforcement, Sri R.K.Yadav, Sri Vijay Kumar Singari, Assistant Traffic Inspector and Sri Naresh Kumar Trivedi, Inspector of Chamba inspected the bus and found that out of 54 passengers boarded in the bus, 10 passengers on physical verification were found that the said passengers had not received the tickets of the bus. It was revealed that the petitioner recovered the money from the 10 passengers but he did not issue tickets to them. The matter was reported to the Divisional Manager of Operation, Dehradun and the department served the charge sheet to the petitioner on 20.3.2007 on the report of the enforcement team. Thereafter, the enquiry was conducted by the enquiry officer and he submitted his report to the departmental authority in which he has held that the charges imposed upon the petitioner are partially proved and charge regarding refusal of the payment of surcharge by the petitioner was not proved in the absence of the evidence. The departmental authority after going through the enquiry report concluded that he was agreeable to the contents of the enquiry report to the extent of Charge Nos. 1 & 2, whereas with regard to the rest of the charge of which the petitioner was exonerated, the departmental authority did not agree to the said finding. A Show cause notice was issued to the delinquent employee and his services were dismissed on 20.5.2007. He preferred an appeal before the General Manager,

Uttarakhand Transport Corporation Ltd. who rejected his appeal on 31.10.2007 and thereafter the petitioner preferred the revision before the Chairman, who also rejected the said revision. Thereafter, he preferred this claim petition with the averment that Sri R.K.Yadav was a member of the inspection team at that time who was Dy. General Manager, Enforcement and in his presence the entire inspection was conducted and later on he became the Divisional Manager, Operation and he passed the punishment order. The petitioner also averred that the disciplinary authority has violated the principle of natural justice as he being a witness of the fact, he should not have been the judge of his own cause. He further pleaded that the enquiry officer did not prove the charge of refusal of payment of surcharge to the inspecting team and the disciplinary authority without assigning any reason has passed the punishment order in utter violation of principle of natural justice. The revisional authority has also considered the past conduct of the petitioner while diciding the revision of the petitioner. The petitioner has never been charged or given any notice about his previous conduct for which his punishment is to be aggravated to the dismissal. The petitioner was not given full opportunity during the enquiry to cross examine the witnesses and to give evidence in his defence.

3. Respondents have denied the averments made by the petitioner in his petition. The respondents have alleged that the petitioner was given an opportunity to cross examine the witnesses but he has stated in his statement that he does not want to adduce any evidence in his defence. Hence, the enquiry officer has rightly concluded the enquiry in accordance with the principle of natural justice. The petitioner had been given show cause notice and thereafter he has been awarded the punishment of dismissal. It was also alleged by the respondents that the punishment of carrying the passengers in a public transport after taking money from passengers and without giving tickets to them is an embezzlement which is a grave offence and it cannot be taken lightly.
4. We have heard learned counsel for the parties and perused the record.

5. At the outset Ld. Counsel for the petitioner has raised a plea that the petitioner had not been given a reasonable opportunity to cross examine the witnesses and the petitioner was never allowed to give evidence in his defence. From the perusal of the original record, which has been summoned by us from the department, reveals that a charge sheet was submitted to the petitioner on 20.3.2007 and reply thereof was received by the respondents which is on record as Paper No.15 of the original record. Thereafter the enquiry officer was appointed and the enquiry officer examined Sri Vijay Singari, ATI, who was a member of the inspection team on the fateful day on 10.3.2007. He has specifically stated that at the time of inspection Sri R.K.Yadav, D.G.M. Enforcement was present and in his presence the inspection was conducted and thereafter the witnesses have also supported his report which was submitted by him to the Divisional Manager. Thereafter the petitioner was given an opportunity to cross examine the witness. Thus, this fact clearly reveals that the petitioner was given sufficient opportunity to cross examine the witnesses and thereafter the enquiry officer has also examined C.M.S. Bhandari, the petitioner. He has specifically stated at last that he does not want to call any witness in support of his case and he has not to adduce any other evidence and he has also stated that his reply to the charge sheet is his statement during the enquiry. Thus, this fact clearly indicates that the petitioner has been given sufficient opportunity and there is no lacuna on the part of the enquiry officer while conducting the enquiry. Thus, we do not find any substance in the contention of the petitioner that he was not given any opportunity to cross examine the witnesses and examine the witnesses in his defence.

6. The next question which was raised by the Ld. Counsel for the petitioner is that the evidence which has been adduced, is not sufficient. The department should have adduced the evidence of Sri Trivedi and Sri R.K.Yadav before the enquiry officer. The law on this point is very clear that this Court is not sitting as a Court of appeal. We

are only examining the manner and mode of the enquiry by way of judicial review.

7. The scope of the judicial review is very limited. The Court or the Tribunal would not interfere with the findings of the fact arrived in the departmental enquiry proceedings excepting in a case of malafide or perversity. That where, there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity would have arrived at that finding and with objectivity, the Court cannot re-appreciate the evidence like an appellate Court so long as there is some evidence to support the conclusion arrived by the departmental authority, the same has to be sustained. While exercising the power of judicial review the Tribunal cannot normally substitute its own conclusion with regard to the misconduct of the delinquent for that of the departmental authority.

8. In this regard, we would like to examine the judgment of the Hon'ble Apex Court, which lays down the proposition of law as to when the Tribunal can re-appreciate the evidence adduced before the enquiry officer. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi vs. Union of India, 1995(5) SLR, 778** has held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or ***conclusions are based on some evidence*****,** the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be ***based on some evidence***. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or

where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. ***Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal***. In Union of India v. H.C. Goel (1964) I LLJ 38 SC , this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

From the perusal of the above, it is clearly held by the Hon'ble Supreme Court that Court and the Tribunal may not interfere with the findings of the enquiry officer regarding the appreciation of evidence where the authority found that the proceedings against the delinquent officer were consistent to the rules of natural justice or are not in violation of statutory rules. The Tribunal has no power to re-appreciate the evidence as an appellate court.

9. Thereafter, the Hon'ble Supreme Court in case of **High Court, judicature at Bombay through its Registrar Vs. Shri Udaysingh & others, 1997(4), SLR 690,** in this case, a complaint was made by a litigant against Civil Judge (Junior Division) for demanding of illegal gratification of Rs. 10,000 to deliver the judgment in her favour. As soon as, she received such information, she complained the matter immediately to her advocate, Assistant Govt. Pleader, who in turn District Govt. Pleader informed the District Judge of the said demand of illegal gratification made by Civil Judge (J.D.). The District Judge, awarded an adverse entry to the delinquent and the Hon'ble High Court initiated a departmental enquiry and ultimately, he was dismissed from the service by the disciplinary authority. The High Court set aside the dismissal of the delinquent and held that the District Judge was biased against the officer and he recorded evidence of three Advocates and the complainant and there was no other evidence to come to the conclusion that the delinquent officer was actuated with a corrupt motive to

demand illegal gratification to deliver favorable judgment. In these circumstances, the Hon'ble High Court allowed the appeal held as under:-

> "10. Accordingly, the order of the Tribunal in reversing the imposing of the penalty was set aside. In another judgment in State of Tamil Nadu v. S. Subaramaniam [1996] 7 SCC 509, this Court has considered the scope of the power of judicial review vis-a-vis re-appreciation of evidence and concluded as under :
> "The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.
>
> The only question is : ***whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved.*** The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees, it is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India : (1996)ILLJ1231SC , State of Tamil Nadu v. T.V. Venugopalan : (1994)6SCC302 , Union of India v. Upendra Singh : (1994)ILLJ808SC , Government of Tamil Nadu v. A. Rajapandian : (1995)ILLJ953SC and B.C. Chaturvedi v. Union of

India at pp. 759- 60. In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

11. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there is bound to be some discrepancies in evidence. But the Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. ***Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct***. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is: whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved? In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District judge to substantiate the adverse remarks made by the District Judge on the basis of the statements to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite had written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion

> that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises: whether their evidence is acceptable or not? In view of the admitted position that the respondent himself did admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When that evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified.
>
> 12. Under these circumstances, the question arises : whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is: what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

The perusal of the above quoted judgment, the Hon'ble Apex Court has held that in the departmental enquiry, the misconduct has not to be proved beyond reasonable time. In the case of disciplinary enquiry, the technical rules of evidence have no application. The preponderance and some evidence on record would be necessary to reach to the conclusion that the delinquent has committed the misconduct. If there is some evidence, it is for the enquiry officer to appreciate and not to the court and the Tribunal.

10. In the light of the judgment as quoted above, there is oral evidence combined with documentary evidence and with the preponderance of

facts, it is revealed that there is an evidence on record. It has also been established that the inquiry officer being fact finding authority, has exclusive powers to consider and appreciate the evidence. The Tribunal while exercising the powers of judicial review, cannot normally substitute its own conclusion after re-appreciation of the facts on record. The Hon'ble Apex Court as laid down that the Tribunal has to see as to whether the findings of the enquiry officer had been based on some evidence or not. If there is some evidence and the conclusion supports the same fact, the disciplinary authority is entitled to hold the delinquent official guilty of the charges. The Tribunal in its powers of judicial review does not act as an appellate authority to re-appreciate the evidence. In view of the above, we find that the evidence of Mr. Singari clearly testifies the version of the respondents and there is sufficient evidence against the petitioner and we do not find any force in the contention.

11. The next point which has been raised by the Ld. Counsel for the petitioner, assailed the punishment order on the ground that charges in respect whereof the petitioner was subjected to disciplinary proceedings and awarded punishment, were based on the joint inspection team comprising Mr. R.K.Yadav, D.G.M., Mr. Singari and Mr. Trivedi; at a later point of time Sri R.K. Yadav became the disciplinary authority who punished the petitioner. He should not have been the disciplinary authority of the petitioner on the principle that both the complainant and the disciplinary authority had combined in one and the person who was a member of the inspecting team, cannot be a judge of his own cause, though he has not appeared before the enquiry officer as a witnesses. Ld. Counsel for the respondents contended that Sri R.K.Yadav, though was available on the spot and he was sitting in the car and he made his signatures on the waybill in the car, thus he was not the witness of the incident. He further pointed out that thus Sri R.K.Yadav was competent to pass the punishment order. From the perusal of the report submitted by the enquiry officer it is clearly revealed that the inspection of the bus of the petitioner was made in presence of the Dy. General Manager, Enforcement Sri

R.K.yadav. The statement of Sri Singari cannot be brushed aside merely on the basis of the arguments of Ld. Counsel for the respondents. The contention of the Ld. Counsel for the respondents cannot be taken as true in view of the statement of Sri Singari given before the inquiry officer. If the enforcement officers are at inspection, naturally all the team members will be present inside the bus which has been corroborated by Sri Singari. The original waybill on record clearly finds place the signatures of Sri R.K.Yadav and it has been admitted by the Ld. Counsel for the respondents. Now the question arises as to whether the principle of bias would apply in this case or not? The general principles of administrative law regarding holding an enquiry are based on three fundamental principles; (1) Bias (2) Natural Justice and (3) Audi alteram partem. If any of the principles are violated, the punishment order is liable to be vitiated. In the administrative law rules of natural justice are foundational and fundamental concept; law is now well settled that the principles of natural justice are part of legal and judicial procedure and it applies to all the administrative bodies or quasi administrative bodies or judicial bodies. The principle of natural justice also lays down that witnesses of any fact cannot be the disciplinary authority; on the settled principles that one cannot be a judge of his own cause. If inquiry proceedings are initiated on the basis of inspection of the punishing authority, in that event the punishing authority cannot be the judge in his own cause and pass the order of punishment. We have also noticed that the petitioner has alleged in his claim petition in Paragraph 4.16 of the claim petition in the last lines that at the time of the inspection the disciplinary authority was also a member of the said inspection team, hence he cannot pass the punishment order dated 24.5.2007 and it is against the law and against the principles of natural justice. Sri R.K.Yadav filed counter affidavit before this Court and the reply of the said paragraph is very vague. In Para 20 of the counter affidavit he has alleged that Paragraph 4(14)is not admitted. We are quoting the said paragraph as under:-

"That contentions made in para 4(14) are not admitted. During inquiry he also deposed before Inquiry officer that he has neither to call anybody nor produce any witness and he is satisfied with the inquiry. Therefore contentions made in this para are not admitted."

He has not denied the fact that he was the disciplinary authority in this case. Thus, it is settled principle of pleadings that if a fact which has been alleged by the petitioner and it is not specifically denied, it will be presumed that the fact is admitted. It is also very cleverly put in the counter affidavit that this fact could not be noticed by the Tribunal that he has not deposed that he had been a punishing authority at the time of awarding the punishment. This fact is admitted to the parties counsel that Sri R.K.Yadav was the punishing authority but at the same time it is observed that Sri R.K.Yadav while signing the punishment order, has not disclosed his name and the designation. It is an official precedent that if any officer puts his signature, he puts his name and designation on the documents. The signature, which has been made in the waybill and on the punishment order are also similar. We are only pointing out this fact that how cleverly the matter has been put before the Tribunal. Now we will like to analyze the legal position in this aspect. In the case of **Arjun Chaubey Vs. Union AIR 1984 SC 1356** the Constitution Bench of the Hon'ble Apex Court in which the delinquent was working as a Clerk in the office of Deputy Chief Commercial Superintendent Railways and the Deputy Chief Commercial Superintendent made a complaint against the delinquent clerk and called upon his explanation and the delinquent submitted his explanation and thereupon he was served the second notice holding that his explanation is not satisfactory and thereafter his services were terminated. The Hon'ble Apex Court in Para 6 has held as under:-

"Observed, while speaking for the majority, that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. We may borrow the language of Das, C.J., and record a finding on the facts of the case before us that the illegality touching the proceedings which ended in the dismissal of the appellant is

"so patent and loudly obtrusive that it leaves an indelible stamp of infirmity" on the decision of respondent 3."

12. Thereafter the matter came up for consideration in **Ratan Lal Sharma Vs. Dr. Hari Ram 1993 (4) SCC 10**. In this case a committee was constituted by the management of school against the Principal to hold the inquiry for the misconduct committed by him and while holding the enquiry, one of the members a of inquiry committee appeared as witness and he gave the evidence and thereafter the Principal was found guilty for the charge for which he appeared as witness and the Principal was removed from the service and his appeal and revision were also rejected. He filed a writ petition before the Hon'ble High Court; Hon'ble Single Judge allowed the petition following the principle of natural justice and held that the committee has committed the flagrant violation of principle of natural justice and principle of bias. A person cannot be a judge of own cause. The managing committee being aggrieved, filed the L.P.A. before the Division Bench and the Division Bench of the Hon'ble High Court allowed the petition and ultimately the matter came before the Hon'ble Supreme Court and the Hon'ble Supreme Court held as under:-

"One of the cardinal principles of natural justice is : Nemo debetesse 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] INSC 247; [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 there after 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.

In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of December was given to the appellant by Shri Maru Ram who was teacher incharge of the

amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and he himself deposed to establish the said Charge No. 12 and thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a predisposition to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was rejected on a very flimsy ground, namely, that since the said Shri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry 875 committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said enquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, ever it very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject matter the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. De Smith in his Judicial Review of Administrative Action, (1980) at pace 262 has observed that real likelihood of bias means at least substantial possibility of bias. In R.v. Sunderland Justices [1924] 1 KB 357 (373) it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In R versus Sussex Justices [1924] 1 KB 256 (259) it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In Halsbury Laws of England, (4th Edn.) Vol.2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in Manak Lal v. Dr. Prem Chand [1957] INSC 9; [1957] SCR 575. This Court has laid down that 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

13. In the case in hand the question has also arisen that the petitioner has not taken plea of bias before the appellate authority as well as before the revisional authority so this plea cannot be taken by this Court. The Hon'ble Apex Court has dealt with this aspect also in following paragraph:-

"In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the

enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to uphold the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge of his own case by being a member of the enquiry committee was not specifically taken before the Deputy commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceeding, more so, when the case of prejudice on 876 account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before be tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in A.M. Allison versus State of Assam[1956] INSC 85; , AIR 1957 SC 227 particularly when the plea sought to be raised for the first time in a Writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that litigant should not be shut out fromraising such plea which goes to the root of the lis involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in A.S. Arunachalam Pillai v. M/s. Southern Roadways Ltd. and another [1960] AIR SC 1191, The Cantonment Board, Ambala v. Pyarelal [1963] 3 SCR 341. In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Maru Ram was included and retained in the enquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry commttee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental

proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner."

14. Again this matter came up before Hon'ble Apex Court in the case of **State of Uttaranchal Vs. Kharak Singh 2008 SCC (L&S) 698**. In this case an enquiry officer, instead of examining the witnesses, he himself inspected the area in the forest and after taking a note of certain alleged discrepancies, secured some answers from the delinquent by putting some question and as such he acted as an investigator, prosecutor and a judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by the Hon'ble Supreme Court. The same view has been reagitated by the Hon'ble Supreme Court in Mohd. Yunus Khan Vs. State of U.P. 2010 (7) SC 970. The Hon'ble Apex Court has also considered a number of judgment of Hon'ble Apex court in this regard. In the last this matter came up before the Hon'ble Apex Court in the case of **Ramesh Chandra Ahaluwalia Vs. State of Punjab 2013(136) FLR 86 in which in para 19** the Hon'ble Court has held as under:-

" In the petition before the High Court as well as the appeal before this Court, the appellant has submitted that the entire disciplinary proceedings are vitiated due to the participation of the Principal, who was biased against the appellant. In our opinion, the order passed by the Disciplinary Committee cannot be sustained on the short ground that Smt. Neera Sharma was a member of the aforesaid Disciplinary Committee. In our opinion, she was clearly disqualified from participating in any deliberations of the Disciplinary Committee as she had appeared as Management Witness No.2*. It is well settled principle of law that no person can be a Judge in his own cause*. Having supported the case of the management, it was not appropriate for Smt. Neera Sharma to participate in the proceedings of the Disciplinary Committee. Given the background of the allegations made by the appellant at all stages of the enquiry not only against the principle, but also the Manager of the School, it was necessary for her to disassociate from the proceedings, to nullify any plea of apprehended bias. Furthermore, when the appeal was being decided by the Disciplinary Committee with regard to the legality or otherwise of the order passed by the Disciplinary Authority, the decision of the Disciplinary Committee not only had to be fair but it also had to appear, to be fair. This is in conformity with the principle that justice must not only be done, but must also appear to be done. Actual and demonstrable fair play must be the hallmark of the proceedings and the decisions of the administrative and quasi judicial tribunals. In particular, when the decisions taken by these bodies are likely to cause adverse civil consequences to the persons against whom such decisions are taken. For the aforesaid reasons, the order dated 18th/19th December, 2008 passed by the Disciplinary Committee is hereby quashed and set aside."

15. In view of the above discussion it is clear that the punishing authority has violated the principle of natural justice and the principle of bias and as such the order passed by the punishing authority is liable to be set aside.

16. The next question for consideration arises according to the Ld. Counsel for the petitioner that the petitioner was found guilty for all charges except one charge i.e. of refusal of payment of surcharge taken by the conductor was not proved in the absence of any evidence. The punishing authority without assigning any reason, issued a show cause notice for the punishment. In this matter two settled issues are involved, namely; requirement of issuing a second show cause notice by the disciplinary authority to the delinquent before imposing the punishment and second is serving the copy of the reasons recorded by the disciplinary authority disagreeing with the findings recorded by the enquiry officer. In the case of **Managing Director ECIL, Hyderabad Vs. B.Karunakaran AIR 1994 SC1074** has held that the delinquent official should be given a copy of the findings of the enquiry officer and if the disciplinary authority disagrees with the findings of the enquiry officer, he will record his own reasons and will give an opportunity to the delinquent official to satisfy him that the proposed reasons are not convincing and he is entitled to be exonerated. Article 311 was amended for the first time by the 15th Constitutional Amendment Act w.e.f. 6.10.1963. The law was again amended by way of 42nd amendment of the Constitution of India, which was enacted in the year 1976. The said Constitutional Amendment brought into light two rights which arose simultaneously only at the stages when the notice to show cause against the proposed penalty was issued. The right to receive the enquiry officers' report and to show cause against the finding of the report was independent of a right to show cause against the penalty proposed. If the disciplinary authority after considering the enquiry officers' report, had dropped the proceedings or had decided to impose the penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the show cause against the proposed penalty, in that case, the employee had neither opportunity to

receive the report nor to represent against the finding of the guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the finding recorded in it, was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Thus, 42nd Constitutional Amendment changes the position of the law and made it obligatory upon the disciplinary authority to provide copy of the enquiry report. The furnishing of the enquiry officers' report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges. The right to prove his innocence to the disciplinary authority was to be expressed by the employee along with right to show cause as to why penalty or lesser punishment should be awarded. The proposition of law that two rights were independent of each other and in fact, belong to two different stages in the enquiry, came into sharp focus; only 42nd Constitutional Amendment, which abolish the second point, pointed out earlier. After 42nd Constitutional Amendment of the Constitution of India, dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank.

17. The Hon'ble Supreme Court in **Union of India Vs. Ramzan Khan, 1991(1) SCC 588, (SLR) 1991, SCC (L&S), 612,** held that after enforcement of the 42nd amendment of the Constitution, it was no longer necessary to issue a show cause notice to the delinquent employee against the punishment proposed . The furnishing of copy of the enquiry officer's report along with the notice to make representation against such report was made obligatory to the punishing authority where it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Hon'ble Supreme Court further held that whenever the enquiry officer is other than disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any charge with proposal of any punishment or not that delinquent employee is entitled to a copy of report to enable him to make a

representation to the disciplinary authority against it and non-furnishing of the report amounts to violation of the rules of natural justice. In view of the above judgment, the furnishing of the copy thereafter, if representation is received against the enquiry report, the departmental authority has to record his reason for the guilt after considering the representation of the delinquent employee. There is no need, now to give opportunity to the delinquent employee about the proposed punishment. The Hon'ble Supreme Court held that the operation of the judgment of furnishing of the copies to the delinquent officials would be perspective and the punishment which has already been imposed shall not be or to be changed on that ground. While passing the order, the Hon'ble Supreme Court allowed all the appeals and set aside the disciplinary action in every cases even which falls prior to the judgment of that case, so this anomaly noticed by the Hon'ble Apex Court, whereas the matter was referred to a larger bench.

18. The Larger Bench of the Hon'ble Apex Court in **Managing Director, ECIL Vs. B.Karunakar, 1993, SCC(L&S), 1184** affirmed the view taken by the Hon'ble Apex Court in Ramzan Khan's case and further the matter was elaborately discussed in the said judgment. The following relevant findings of the Hon'ble Supreme Court are very relevant to quote here as under**:---**

"26. The reasons why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also principles of natural justice is that the findings recorded by the enquiry officers form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of

justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute and important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the stages of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages . The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence , enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in

effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28.The position in law can also be looked at the form a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him. The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry , to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed., ", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it

arrives at its conclusion with regard to his guilt or innocence of the charges.

29.Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

19. The original record does not reveal that the punishing authority has recorded any detailed findings for disagreeing with the enquiry officer and he has only written that he is not agreeable with the findings recorded by the enquiry officer. Thus, this is a case where no findings have been recorded and this is totally against the principles of natural justice and petitioner should not have been punished on this ground alone.

20. The matter was also threshed out in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Misra AIR 1998 SC 2713**, in which the Hon'ble Apex Court has held in Para 19 as under:-

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, *whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer*. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

21. The Punishing authority only held that he is satisfied that the charge which has been held not proved by the enquiry officer, has been proved; no reasons have been assigned on record or in the notice

which is mandatory in the notice in view of the above judgment. In the case of **S.P.Mahlotra Vs. P.N.B. 2013 LLR 897,** the enquiry was conducted against the delinquent Clerk and the enquiry officer exonerated on the charges and the disciplinary authority partly agreed with the findings and partly disagreed with the findings of the charges and the petitioner was dismissed from the service. It was held by the Hon'ble Apex Court that the case of Kunj Bihari (supra) is applicable in this case and as such opportunity has not been given. In the instant case the punishing authority should have recorded his reasoning and the copy thereof has to be given to him and in view of the judgment of ECIL (supra), he should have been given an opportunity to raise objections against the said findings. Merely writing that he is convinced that he is guilty, is no finding in the eyes of law as such the order is liable to be vitiated.

22. Ld. Counsel for the petitioner also put his stress on the point that the revisional authority has considered petitioner's past conduct, so the order is bad. Ld. Counsel for the respondents contended that he had a number of punishments prior to this punishment. Perusal of the record reveals that Ld. Counsel for the petitioner could not demonstrate that the punishment order has been passed on the basis of past conduct. The past conduct of the petitioner can only be considered when he has been noticed for the same, either at the time of the charge sheet or at the time of the notice by the disciplinary authority. The past conduct had a bad consequence against the petitioner if his past conduct is considered without being noticed to him, he may get severe punishment. Thus, the principle of natural justice specifically demands, he should be noticed before considering the past conduct of the petitioner. The Hon'ble Apex Court in the case of Mohd. Yunus Khan Vs. State of U.P. & others 2010(7) 970 has held as under:-

"*33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the post conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at*

least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & others Vs. BIshamber Das Dogra, [26] (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam Vs. Bimal Kumar Pandit, [27] AIR 1963 SC 1612; India Marine Service (P) Ltd. Vs. Their Workmen, [28], AIR 1963 SC 528; State of Mysore Vs. K Manche Gowda,[29] AIR 1964 SC 506; Colour-Chem Ltd. Vs. A.L. Alaspurkar &others,[30] AIR 1998 SC 948; Director General, RPF Vs. Ch. Sai Babu,[31] (2003) 4 SCC 331, Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate,[32] (2005) 2 SCC 489; and Govt. of A.P. & others Vs. Mohd Taher Ali,[33] (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/ service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

The above *ratio decidendi* laid down by the Hon'ble Apex Court is expressed in terms; so the punishing authority, appellate authority as well as revisional authority should have considered this aspect at the time of considering the punishment. Hence, the order of revisional authority is liable to be quashed on this ground alone. If the revisional authority would have felt that his past conduct has not been considered by the subordinate authority, he could have directed to the departmental authority after quashing the appellate order and the punishment order to give a notice to the petitioner and thereafter passed the punishment order.

23. Ld. Counsel for the respondents has put his labour hard only to show the law on the point that the misconduct of the Conductor was grave which deserves maximum punishment of dismissal. He also contended that the bus when plies on the road, remains independently in the hands of the Conductor. There are few chances when the inspection staff inspects the bus and discover such the misconducts committed

by the conductor in charge. Ld. Counsel for the respondents has relied upon the following judgments in support of his case, U.P.S.R.T.C. Vs. Ram Kishan Arora 2007 LLR 755, , U.P.S.R.T.C. Vs. Vinod Kumar, 2007 (8) Supreme 278, Uttaranchal Transport Corp. Vs. Sanjay Kumar Nautiyal, 2008 UAD 490, , U.P.S.R.T.C. Vs. Rajpal Singh W.P. (S/B) decided on 16.01.2009, , U.P.S.R.T.C. Vs. Nanhe Lal Kushwaha, 2009(82) AIC 58(SC) decided on 04.08.2009, N.W.K.R.T.C. Vs. H.H.Pujar, 2008 LLR 946, , U.P.S.R.T.C. Vs. Suresh Chand Sharma, 2010 (126) FLR 157, Sanat Kumar Vijjan Vs. Uco Bank & others, 2011 (3) UC 2007, , Ram Sahay Chaudhary Vs. U.P.S.R.T.C., 2010 (126) FLR 589, Prem Prakash Vs , U.P.S.R.T.C., Claim Petition No. 60/2007 decided on 10.06.2009 & Rehan Ahmad Vs. U.T.C., Claim Petition No. 05/2005 decided on 22.10.2009.

24. As we have pointed out that the punishing authority has not fulfilled the norms of passing the punishment order has not followed the principle of natural justice, so the question of harsh punishment does not arise. The above judgments are not applicable in the facts and circumstances of this case. No doubt, if the proceedings would have been conducted fairly without bias and after adopting the procedure as laid down under the principles of natural justice for dismissal of an employee, the judgment would have the relevance. Now we do not find any support by these judgments to the respondents.

25. In view of the above discussion we conclude as follows:-

(i) The then Divisional Manager correctly issued the charge sheet to the delinquent, there is no infirmity or violation of principles of natural justice while conducting the enquiry. The enquiry officer has followed the correct procedure to conclude the enquiry.

(ii) There is evidence against the petitioner to prove the charges for which the enquiry officer has held him guilty.

(iii) Sri R.K.Yadav, who was the Dy. General Manager, Enforcement at the time of the inspection of the bus and now Mr. R.K.Yadav as Divisional General Manager is also the punishing authority in this case, so he cannot be the judge of his own cause, so the

punishment order at the stage of show cause notice is liable to be quashed.

(iv) The past conduct of the petitioner has been considered by the revisional authority without giving him an opportunity by a notice.

(v) Even if on the date of the further proceedings, Sri R.K.Yadav remains the Divisional Manager, Uttarakhand Transport Ltd., the punishing authority, he will not pass order of punishment or he will not issue the show cause notice to the petitioner. The respondents will take proper steps in accordance with law to change the punishing authority. In case the punishing authority feels that the petitioner has previous conduct, he should follow the directions contained in the preceding paragraph as directed by the Hon'ble Supreme Court.

(vi) The show cause notice issued by disciplinary authority is also liable to be quashed because the show cause notice has also been given by Sri R.K. Yadav who could not deal with the enquiry regarding the punishment of the petitioner.

(vii) If the punishing authority is not agreeable to the findings recorded by the enquiry officer regarding the exoneration of the petitioner on one of the charges, he will record his reasons, which will be communicated to the petitioner as has been indicated in the preceding paragraph. The finding of the disciplinary authority disagreeing as well as the findings recorded by the enquiry officer would be given to the delinquent employee in accordance with law. Thereafter the punishing authority will pass the proper punishment order in accordance with the provisions of law. In the aforesaid terms, the petition is remitted to the departmental authority to proceed further from the stage mentioned above of the proceedings against the petitioner. The above process would be concluded expeditiously preferably within three months from the date of filing of the certified copy of the judgment. The petition would be

reinstated. The punishing authority would be at liberty to suspend the petitioner in case if he deems proper. The salary for the period of suspension to the period of reinstatement would be determined by the punishing authority as provided in law after passing the appropriate order in the matter. The parties shall bear their own costs.

A copy of the judgment may be placed in the Misc Case No.09/DB/13 and the Misc. Case No. 09/DB/13 be listed before the Court on 21.11.2014.

(D.K.KOTIA) **(JUSTICE J.C.S.RAWAT)**
VICE CHAIRMAN (A) CHAIRMAN

DATED: NOVEMBER 3, 2014
DEHRADUN
VM