

Union Of India vs Ram Lakhan Sharma on 2 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4860, AIR ONLINE 2018 SC 527, 2019 LAB IC 576, (2018) 159 FACLR 6, (2018) 2 CURLR 1047, (2018) 3 ESC 414, (2018) 3 JLJR 280, (2018) 3 LAB LN 19, (2018) 3 PAT LJR 319, (2018) 3 SCT 538, (2018) 4 JCR 11 (SC), (2018) 6 SERVLR 101, 2018 (7) SCC 670, 2018 (8) ADJ 80 NOC, (2018) 8 SCALE 387, AIR 2019 SC (CIV) 624

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Bench: Ashok Bhushan, Adarsh Kumar Goel

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2608 OF 2012

UNION OF INDIA & ORS.

... APPELLANTS

VERSUS

RAM LAKHAN SHARMA

... RESPONDENT

WITH

CIVIL APPEAL NO.6745 OF 2013,
CIVIL APPEAL NO.9373-9374 OF 2013 AND
CIVIL APPEAL NO.1800 OF 2014.

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed by the Union of India questioning the judgments of the Gauhati High Court by which writ petitions filed by the respondents challenging their orders of removal were allowed by setting aside the removal/dismissal orders and the respondents were directed to be reinstated. The High Court had allowed the writ petitions filed by the respondents on more or less similar grounds, hence, it shall be sufficient to notice the facts and pleadings in detail in Civil Appeal No.2608 of 2012 for deciding this batch of appeals.

2. The respondent- Ram Lakhan Sharma was appointed as constable in the Central Reserve Police Force (hereinafter referred to as "CRPF") on 10.04.1991. On 23.10.1999 while he was posted as constable 11 Bn., CRPF at Agartala, Tripura he went out from Guard duty at 09.00 a.m. and returned back at 09.50 a.m. In the afternoon, an allegation was made by one lady Smt. Gita Paul making allegation of rape against the respondent and First Information Report was registered on 23.10.1999 at the Police Station under Section 376 IPC.

3. On 23.10.1999 the appellant was placed under suspension. On 04.12.1999 chargesheet was issued to the respondent containing articles of charges I and II. First charge was that the appellant remained absent without proper permission of competent authority with consent of his Guard Commander from his duty on 23.10.1999 from 0900 hrs. to 0930 hrs. Second charge was that he while functioning as constable (Guard) has committed an act of misconduct in his capacity as a member of the force in that he tried to do sexual intercourse with a woman with mutual consent by giving money which amounts to indiscipline/moral turpitude.

4. The disciplinary authority appointed one Shri S.S. Bisht, Second-in-Command, 11 Bn CRPF as Inquiry Officer. The Inquiry Officer recorded the prosecution evidence. The Inquiry Report was submitted which was also supplied to the delinquent vide letter dated 07.02.2000 asking the respondent to submit reply within 15 days. The Commandant, 11 Bn passed an order on 19.03.2000 imposing penalty of removal from service w.e.f. 19.03.2000 under Section 11(1) of the Central Reserve Police Force Act, 1949 read with Rule 27 of the Central Reserve Police Force Rules, 1955.

5. On the basis of First Information Report registered against the respondent a chargesheet was submitted in the Court of Sessions Judge, Tripura, Agartala. Learned Sessions Judge after completing the trial on 20.09.2001 acquitted the respondent from charges levelled against him. After acquittal from criminal case the respondent filed a Writ Petition No.6778 of 2000 in the High Court of Allahabad challenging his order of removal. The High Court by order dated 20.05.2004 disposed of the writ petition giving liberty to the respondent to file an appeal under CRPF Rules, 1955 within two weeks. In pursuance of the order of the High Court an appeal was filed before D.I.G.R., CRPF, Patna. The Appellate Authority rejected the appeal by its order dated 22.07.2004 against which order a revision was filed before the Inspector General of Police, CRPF which too was rejected on 02.03.2005. Challenging the order of removal as well as orders passed in appeal and revision the respondent filed Writ Petition (C) No.14 of 2006. Learned Single Judge vide judgment dated 12.04.2010 allowed the writ petition by setting aside the removal order and directed for reinstatement of the respondent. The learned Single Judge also permitted the appellant to initiate the disciplinary inquiry afresh from the stage of appointing Presenting Officer. It was further directed that if the departmental proceeding is required to be started afresh, the respondent shall be placed under suspension and during the period of suspension, subsistence allowance should be paid. It was left to the wisdom of the authority to decide on arrear pay and allowances of the respondent.

6. Union of India filed an appeal against the judgment of the learned Single Judge being Writ Appeal No.25 of 2010. The Division Bench of the High Court by its judgment dated 10.01.2011 dismissed the writ appeal aggrieved by which order Civil Appeal No.2608 of 2012 has been filed by the Union of India.

7. The facts and pleadings in other civil appeals being more or less similar they need to be only briefly noted.

8. Union of India has filed this appeal challenging the judgment of the Division Bench dated 18.01.2013 by which Writ Appeal No.1 of 2013 filed by the Union of India questioning the judgment of the learned Single Judge was dismissed. The respondent, Shri T. Lupheng while posted at Manipur on 24.03.2008 sought permission from his senior during his duty hours for going to the Bank to withdraw his salary. He was allowed to go and directed to report back to his duties. On his return he was found under the influence of alcohol. On 07.04.2008 the personnel was suspended. On four articles of charges inquiry was held. The Inquiry Officer recorded the evidence of prosecution. The inquiry was completed and report was submitted on 19.06.2008. The disciplinary authority vide its order dated 05.07.2008 awarded the punishment of dismissal from service. An appeal was filed which was dismissed by DIG, CRPF on 07.11.2008. The revision was also dismissed by IGP-C/S, CRPF on 05.06.2009. Writ Petition No.556 of 2009 was filed in the Gauhati High Court which was allowed by the learned Single Judge by judgment dated 04.08.2012. A writ appeal was filed by the Union of India which was dismissed by the Division Bench on 18.01.2013 against which this appeal has been filed.

Civil Appeal Nos.9373-74 of 2013

9. These appeals have been filed by the Union of India against the Division Bench judgment dated 24.08.2012 by which the appeal filed by the Union of India questioning the judgment dated 08.02.2012 has been dismissed. The respondent was serving as constable in F/27 Bn CRPF. It was alleged that on 13.04.2000 he left lines without seeking prior permission, consumed liquor and created nuisance in the market. The chargesheet was issued to the respondent containing two articles of charges. The Inquiry Officer was appointed. Inquiry Officer recorded the statement of 12 prosecution witnesses. By an order dated 30.08.2000 the respondent was dismissed from services. There were two other delinquents apart from the respondent who were proceeded with and dismissed by the common order. Learned Single Judge relying on an order of the High Court in Writ Petition (C) No.297 of 2002 (Sri Mutum Shanti Kumar Singh vs. Union of India) on 08.02.2012 set aside the order of the dismissal and directed reinstatement of the respondent. Union of India filed Writ Appeal No.32 of 2012 challenging the order of Learned Single Judge before the Gauhati High Court. The Division Bench of the High Court by order dated 24.08.2012 dismissed the writ appeal. Review petition was filed by the Union of India which too was dismissed on 18.01.2013. Consequently, these appeals have been filed by the Union of India.

10. This appeal has been filed by the Union of India against the Division Bench judgment of the High Court dated 29.05.2013 by which writ petition filed by the respondent challenging the disciplinary proceedings for dismissal of the respondent was allowed. The respondent while serving at Chotheagaon, Bishnupur (Manipur) on 12.03.2007 deserted from line without permission of competent authority. Subsequently, an FIR was lodged on 12.03.2007. A warrant was issued to apprehend him on 29.07.2007 but he could not be apprehended. A Court of Inquiry was conducted and the respondent was declared "DESERTER" w.e.f. 12.03.2007 vide order dated 13.07.2007. A Departmental proceeding was initiated with articles of charges on 12.11.2007. Since, the respondent

had not reported in the Unit, the inquiry proceeded ex parte. Charges levelled against the respondent were found proved. An order dated 20.05.2008 was passed awarding dismissal from service to the respondent. Thereafter, he submitted appeal before DIG, CRPF. A writ petition was filed by the respondent. The writ petition was disposed of on 29.05.2013 setting aside the dismissal order and directing for reinstatement. The appeal has been filed against the above said judgment.

11. The Gauhati High Court had allowed the writ petition filed by the respondents on the ground that in the disciplinary inquiry the principles of natural justice were violated. The High Court found that no Presenting Officer was appointed and the Inquiry Officer acted as prosecutor which violates the principles of natural justice and the entire inquiry was set aside on the aforesaid ground with liberty to the respondent to hold afresh inquiry from the stage of appointing of the Presenting Officer.

12. All the appeals filed by the Union of India raises almost similar question of law and facts and the learned counsel for the Union of India has also raised common submission in all the appeals.

13. Learned counsel for the appellant, Shri Vikramjit Banerjee, Addl. Solicitor General contends that the High Court committed error in setting aside the dismissal order on the ground of non-appointment of Presenting Officer. It is submitted that Rule 27 of CRPF Rules, 1955 which provides for holding of disciplinary inquiry does not provide for appointment of Presenting Officer. The appellants have followed the requirement of Rule 27 in holding disciplinary inquiry in consonance with principles of natural justice, hence, there was no occasion to set aside the dismissal order. It is submitted that the respondents were given full opportunity in the disciplinary inquiry including serving chargesheet, giving opportunity to cross-examine the witnesses, opportunity to lead evidence and submit a reply to the Inquiry Report.

14. Learned counsel for the appellant submits that Rule 27 does not mandate the appointment of Presenting Officer to hold disciplinary inquiry. It is further submitted that even if it is assumed that while non-appointment of Presenting Officer, principles of natural justice have been violated, respondents have to show what prejudice has been caused due to non-appointment of the Presenting Officer in the department enquiry. No prejudice having been caused to any of the respondents, they were not entitled for grant of relief as has been granted by the High Court.

15. Learned counsel appearing for the respondents refuting the above submissions contends that the High Court has rightly set aside the dismissal/removal orders of the respondents. In the facts and circumstances of the present case, appointment of Presenting Officer was necessary to ensure compliance of principles of natural justice which having not been done the respondents have been seriously prejudiced. It is submitted that Inquiry Officer himself acted as prosecutor by putting questions to the prosecution witnesses. Inquiry Officer having become prosecutor with entire approach towards inquiry was tainted with bias and has rightly been interfered by the High Court. It is submitted that Inquiry Officer having acted as a prosecutor no further prejudice needs to be proved.

16. We have considered the submissions of the learned counsel for the parties and perused the records.

17. Before we proceed to consider the rival submissions of the learned counsel for the parties, it is relevant to look into the reasons given by the High Court for allowing the writ petitions filed by the respondents.

18. In Civil Appeal No.2608 of 2012(leading appeal) judgment of learned Single Judge allowing the writ petition is dated 12.04.2010 which is filed at Annexure P-7 to the appeal. After elaborately considering the facts of the case, the nature of charges and affidavit filed in the writ petition, learned Judge proceeded to decide the writ petition. Learned Single Judge had directed to make available the proceedings of the disciplinary inquiry and on perusal of the proceedings of the disciplinary inquiry Learned Single Judge came to the conclusion that no Presenting Officer was appointed in the said proceedings and the Enquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further came to the conclusion that Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. It is useful to extract paragraphs 9 and 10 of the judgment which are to the following effect:

“(9) This Court directed the learned Asstt. S.G. appearing for the respondents to make available the proceedings of the disciplinary enquiry against the petitioner. On perusal of the proceeding, it is crystal clear that no Presenting Officer was appointed in the said proceedings and the Enquiry Officer himself led the examination in chief of the prosecution witness by putting questions. This fact is not disputed by the learned Asstt. S.G. appearing for the respondents, but his only submission is that all opportunities were given to the writ petitioner to put up his defence case and also the writ petitioner had pleaded guilty for both the charges levelled against him.

(10) It is, therefore, crystal clear that the Enquiry Officer acted himself as Prosecutor and Judge in the said disciplinary enquiry against the writ petitioner. From this admitted fact, it may not be wrong to infer that there were no fair procedures in the disciplinary proceedings as a result of which principle of natural justice was undisputedly denied to the writ petitioner.”

19. The Division Bench of the High Court in writ appeal against the aforesaid judgment also affirmed the aforesaid view of the learned Single Judge while dismissing the writ appeal.

20. As noted above there are two principal submissions raised by the learned counsel for the appellant, they are: (i) The disciplinary inquiry is required to be conducted under Rule 27 of 1955 Rules which does not contemplate appointment of a Presenting Officer. Hence, the inquiry proceedings are not vitiated by the non-appointment of Presenting Officer.

(ii) The disciplinary inquiry has been held against the respondents by complying with the principles of natural justice. No principle of natural justice is violated by non-appointment of Presenting Officer. No prejudice has been caused to the respondents by non-appointment of Presenting Officer.

21. Rule 27 sub-rule (c) of the CRPF Rules, 1955 provides for the procedure for conducting a departmental enquiry which is as follows:

“Rule 27(c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so.”

22. A perusal of the aforesaid Rule does not indicate that Rule contemplates appointment of Presenting Officer. Service conditions including punishment and appeal procedure of an employee are governed by statutory rules. The CRPF Act, 1949 has been enacted by the Parliament for the constitution and regulation of an armed Central Reserve Police Force. Section 18 of the Act empowers the Central Government to make rules for carrying out the purposes of this Act.

23. The disciplinary proceedings are quasi-judicial proceedings and Inquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercises quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

24. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. Its all facets are steps to ensure justice and fair play. This Court in Suresh Koshy George vs. University of Kerala and others, AIR 1969 SC 198 had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In paragraph 7 this Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of Tribunal and the rules under which it functions. Following was held in paragraphs 7 and 8:

“7....The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In Russel v. Duke of Norfolk, Tucker, L. J. observed:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

25. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in A.K. Kraipak and others vs. Union of India and others, AIR 1970 SC 150. This

Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles that is no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In paragraph 20 following has been held:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably....”

26. In *State of Uttar Pradesh and others vs. Saroj Kumar Sinha*, 2010 (2) SCC 772, this Court had laid down that inquiry officer is a quasi-judicial authority, he has to act as independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paragraphs 28 and 30 following has been held:

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

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

27. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not

mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Inquiry Officer acting as the prosecutor against the respondents. The Inquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

28. Justice M. Rama Jois of the Karnataka High Court had occasion to consider the above aspect in Bharath Electronics Ltd. vs. K. Kasi, ILR 1987 Karnataka 366. In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Inquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Inquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. Following was held in paragraphs 8 and 9:

“8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry See :

Gopalakrishna Reddy v. State of Karnataka (ILR 1980 Kar 575). It is true that in the absence of Presenting Officer if the Inquiring Authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.

9. The third ground on which the Industrial Tribunal held that the domestic inquiry was invalid was that the Inquiry Officer had played the role of the Presenting Officer.

The relevant part of the findings reads :

"The Learned Counsel for the workman further contended that the questions put by the Enquiry Officer to the Management's witnesses themselves suggest that he was biased and prejudiced against the workman. There has been no explanation as to why no Presenting Officer was appointed and as to why the Enquiry Officer took upon himself the burden of putting questions to the Management witnesses. The enquiry proceedings at Ext. A-6 disclose that after the cross-examination of the Management's witnesses by the defence, the Enquiry Officer has further put certain questions by way of explanation, but from their nature an inference arises that they are directed to fill in the lacuna. The Learned Counsel for the Management contended that the Enquiry Officer has followed the principles of natural justice and that the domestic enquiry is quite valid. I am of the view that the fact that the Enquiry Officer

has himself taken up the role of the Presenting Officer for the management goes to the root of the matter and vitiates the enquiry,"

As far as position in law is concerned, it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is : Whether the Inquiry Officer did so ? It is also settled law that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the Inquiring Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair. See : Munchandani Electric and Radio Industries Ltd. v. Their Workman."

29. This Court had occasion to observe in Workmen of Lambabari Tea Estate vs. Lambabari Tea Estate, 1966 (2) LLJ 315, that if Inquiry Officer did not keep his function as Inquiry Officer but becomes prosecutor, the inquiry is vitiated. Following was observed:

"The inquiry which was held by the management on the first charge was presided over by the manager himself. It was conducted in the presence of the assistant manager and two others. The enquiry was not correct in its procedure. The manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and manager in turns. The record of the enquiry as a result is staccato and unsatisfactory."

30. A Division Bench of the Madhya Pradesh High Court speaking through Justice R.V. Raveendran, CJ (as he then was) had occasion to consider the question of vitiation of the inquiry when the Inquiry Officer starts himself acting as prosecutor in Union of India and ors. vs. Mohd. Naseem Siddiqui, ILR (2004) MP

821. In the above case the Court considered Rule 9(9)

(c) of the Railway Servants (Discipline & Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well recognised facets in paragraph 7 of the judgment which is to the following effect:

"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets:

(i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator,

(iv) A witness cannot be the Adjudicator,

(v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.”

31. The Division Bench further held that where the Inquiry Officer acts as Presenting Officer, bias can be presumed. In paragraph 9 is as follows:

“9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Inquiry Officer is in position of a Judge or Adjudicator. The Presenting Officer is in the position of a Prosecutor. If the Inquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Inquiry Officer conducts the examination-in- chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross- examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Inquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Inquiry Officer does not have an open mind.”

32. The Division Bench after elaborately considering the issue summarised the principles in paragraph 16 which is to the following effect:

“16. We may summarise the principles thus:

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent

employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

33. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in facts situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context reference is made of a case of this Court in Punjab National Bank and others vs. Kunj Behari Misra, 1998 (7) SCC 84. In the above case, this Court had occasion to consider the provisions of Punjab National Bank Officer Employees’ (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in paragraph 10 of the judgment is as follows:

“7. Action on the enquiry report.—(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.”

34. The question which was debated before this Court was that since Regulation 7(2) does not contain any provision for giving an opportunity to the delinquent officer to represent before disciplinary authority who reverses the findings which were in favour of the delinquent employee, the rules of natural justice are not applicable. This Court held that principle of natural justice has to be read in Regulation 7(2) even though rule does not specifically require hearing of delinquent officer. In paragraph 19 following was held:

“19. 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 it records 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.”

35. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012.

36. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

37. In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents.

.....J. (ADARSH KUMAR GOEL)J. (ASHOK BHUSHAN) NEW DELHI,
JULY 02, 2018.