

UNION OF INDIA

v.

B.N. JHA

MARCH 7, 2003

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

Service Law:

Border Security Force Act/Border Security Force Rules; Sections 45 & 46: Principle of Natural Justice—Protection from personal bias—Held: An Authority who was biased could not direct his subordinate officer to initiate disciplinary proceedings against an errant employee—Neither the record was shown to the errant employee nor disciplinary authority applied his independent mind in the preparation of record of evidence to come to the conclusion of guilt—Thus right to protection from bias of the errant employee had been breached—Hence, High Court rightly set aside order of dismissal of the employee.

Legal Maxims:

Maxims “specialia generaliabus non derogant”, “Audi alteram partem” and “Nemo Judex in causa sua” in connection with principle of natural justice—Discussed—Administrative Law.

Respondent was working as Deputy Commandant in the Training Centre and School of the Border Security Force. He allegedly received bribe from two persons for procuring their appointment in the B.S.F. The Unit Commandant had asked one of his subordinate Commandant to inquire into the matter. In the meanwhile, Unit Commandant also examined and recorded confession of the delinquent officer and other two persons and transferred the delinquent officer to another training Centre under the same Office and asked the Commandant of the Centre to initiate disciplinary proceedings against the delinquent officer and later the General Security Force Court found him guilty and he had been dismissed from service. The Writ Petition filed by the aggrieved officer was allowed by the Single Judge and on appeal affirmed by the Division Bench of the High Court on the ground of denial of the valuable right of protection from bias of the delinquent. Hence the present appeal.

A It was contended for the appellant that the disciplinary proceedings against the delinquent officer were initiated strictly as per B.S.F. Rules; that delinquent had been provided with opportunity to cross examine the witness and the authority; and that the High Court does not possess power of superintendence over the B.S.F. Court, so it could not re-appreciate evidence by exercising its jurisdiction under Article 226.

B On behalf of the respondent, it was submitted that since Unit Commandant was a prosecution witness in the trial, the posting of delinquent officer during the period ought to have been done by the Headquarters; and that the disciplinary proceedings initiated by the Commandant at the instance of Unit Commandant/PW became invalid due to lack of jurisdiction.

C Dismissing the appeal, the Court

HELD: 1.1. The Scheme of the Border Security Force Act and the Rules leading to holding of a trial by the General Security Force Court leaves no manner of doubt that the basic principles of natural justice have been codified therein. The provisions of the Act and the Rules in no uncertain terms envisage protection from bias against an officer. The Act even sought to fill up the gaps occurring in other Acts so as to protect a person from personal bias or a real likelihood of bias. [733-D]

E 1.2. The Basic Training Centre, Specialised Training Centre and School or Administrative Wing are the three wings of the BSF, Training Centre and School; each wing being a component thereof the same cannot be treated to be a separate unit for the purpose of Rule 45B of the B.S.F. Rules. [734-A]

F 1.3. Keeping in view the personal interest shown by the Unit Commandant he should not have exercised his purported statutory power under Rule 46 by attaching the respondent to a wing of the own unit. Exercise of a statutory power may, although not be invalidated on the ground of inherent lack of jurisdiction on his post but the order of attachment passed by him, having regard to the facts and circumstances of the case, must be held to be illegal. [734-E]

G 1.4. A power under Rule 16(7) of the Rules can be exercised in a general manner and not in a particular manner far less in a particular matter where Rule 46 will be applicable. The principles of *specialia generalibus non derogant* shall apply in such a case and such power

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cannot be delegated by the concerned Authority to another. [734-F] A

1.5. The Unit Commandant, in exercise of power conferred upon him under Rule 46, could not have directed the Commandant of a wing of his own unit to initiate departmental proceedings. In law the disciplinary authority alone was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is contemplated or not. He cannot do so at the instance of a higher authority who had not only no role to play in the matter but was also biased. [735-A, B] B

Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR (1952) SC 16 and *Union of India and Ors. v. Harish Chandra Goswami*, [1999] 4 SCC 575, relied on. C

S. Parthasarathi v. State of A.P., [1974] 3 SCC 459; *Manak Lal v. Prem Chand*, AIR (1957) SC 425; *Andhra Pradesh State Road Transport Corporation, Hyderabad v. Sri Satyanarayana Transports (P) Ltd. Guntur*, AIR (1965) SC 1303; *Mineral Development Ltd. v. The State of Bihar*, AIR (1960) SC 468 and *Ratan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School*, [1993] 4 SCC 10, referred to. D

Franklin v. Minister of Town & Country Planning, (1948) AC 87 and *Metropolitan Properties Co. (FGC) Ltd. v. Lannon*, (1968) 3 ALL ER 304, referred to. E

Halsbury's Laws of England Vol.1(I) 4th Edition and Administrative Law by J.F. Garner, referred to.

2. Rule 45B of the Rules, having regard to the extent and nature of the power of the disciplinary authority, leaves no manner of doubt that the Commandant of the accused is required to apply his mind on the materials on record so as to enable him to arrive at a finding in favour or against the delinquent officer. The manner in which the chargesheet has been drawn leads to only one conclusion that the subordinate officer/disciplinary authority did so only on the command of the Unit Commandant and that no record is available with him to show that the respondent was supplied with any material as is mandatorily required under Rule 45B. The respondent has not been given an opportunity to make a statement in his defence. There is also nothing on record to show that disciplinary authority had applied his own independent mind thereupon for directing preparation of record of evidence. From the F
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A tenor of the charge sheet it only appears that he merely heard the officer as to whether he pleads guilty thereto or not. The findings of the Single Judge that valuable rights of the respondent had been breached, affirmed by the Division Bench of the High Court, cannot be said to be perverse or contrary to law. [740-C-D-E-F]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No.2054 of 2002.

From the Judgment and Order dated 23.3.2001 of the Delhi High Court in L.P.A. No. 202 of 1999.

C Ranjit Kumar, S. Wasim A. Qadri and Ms. Sushma Suri for the Appellants.

R.P. Sharma and Ms. Prasanthi Prasad, for the Respondent.

The Judgment of the Court was delivered by

D **S.B. SINHA, J.** The Border Security Force (BSF) has a Training Centre and School (TCS) in the District of Hazaribagh. The said training center is one of the units of the BSF. It has several wings, namely, Admn. Wing, BTC (Basic Training Centre), STS (Specialist Training School) and STC (Subsidiary Training Centre), etc. All the wings of TCS are said to be located in the same premises.

E The respondent herein was a Deputy Commandant in the TCS. The Unit Commandant of TCS happened to be one Mr. B.S. Garcha. In or about July, 1990 the respondent was accused of having received gratification from two persons, namely, B.K. Jha and Santosh Kumar Jha for procuring their recruitment as constables in the BSF which was discovered in the following circumstances.

F On 17.7.1990 a sum of Rs. 1700 was said to have been stolen from the said B.K. Jha. Allegedly, he gave out that the respondent had accepted a sum of Rs. 5,000 for his recruitment. On 16.7.1990 one Mr. Raj Singh, Deputy Commandant reported to Commandant, Mr. J.S. Bakshi that the said B.K. Jha had stated in presence of one Mr. G.S. Rana that he had brought out a sum of Rs. 8,500 from his house out of which he was, as per instruction of his father, to pay a sum of Rs. 7,000 for his recruitment but he in fact paid a sum of Rs. 5,000 to the respondent a week prior to the date of offence. One Constable of the Administrative Wing allegedly came to him to collect money for the respondent and he had paid a further sum of Rs. 1,000. Mr. J.S.

H Bakshi at about 0930 hours on 17.7.1990 informed Mr. Garcha that the

respondent came to his office and apologized for having taken the money. Mr. Garcha asked Mr. Bakshi to inquire into the matter further who thereupon submitted his report by way of a letter. A

Mr. Garcha allegedly examined the said two persons as also the respondent. An alleged confession about the commission of the offence is said to have been made before him by the respondent herein. He was thereafter posted in BTC. B

Mr. Garcha on or about 4.9.1990 asked Mr. M.S. Arya, Commandant, BTC to initiate disciplinary proceedings against him. The said letter dated 4.9.1990 reads thus:

“CONFIDENTIAL C

DIG/Disc/90/BSF
Border Security Force
Trg. Centre & School
Hazaribagh (Bihar)

No. 07/SECR/90/Sub-47

4th Sept. 1990

To
Shri M.S. Arya,
Commandant BTC
TC&S
Hazaribagh. D

Sub: Acceptance of Illegal Gratification by Shri B.N. Jha, Dy. Comdt. BTC for Enrolment of R/CTs Bhabesh Kumar and Santosh Kumar Jha in the BSF. E

Please find enclosed herewith photostat copies of Commandant STC BSF HAZARIBAGH letter No. STC/Dis/2156 dated 17th July, 1990 and STC/Dis/90 dated 18th July, 1990 regarding the acceptance of illegal gratification by Shri B.N. Jha, Dy. Comdt. from R/Cts. Bhabesh Kumar and Santosh Kumar Jha, recruited from Madhubani (Bihar) for your information. The letters mentioned above are self-explanatory. The Cassettes containing the voluntary statements of the said reacts are available with commandant STC Hazaribagh which may be obtained from him if required. F G

2. You are, therefore requested to kindly initiate disciplinary action against Shri B.N. Jha, Dy. Comdt. working under your control immediately.

Sd/-
(B.S. GARCHA) H

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DIG & COMMANDANT

Copy to:

Shri J.S. Bakshi, Commandant STC BSF, Hazaribagh for information please. He is requested to produce the witnesses and the Cassettes containing tape recorded statements of the reacts in question, as and when required by Shri M.S. Arya, Comdt. Sd/-

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(B.S. GARCHA)

DIG & COMMANDANT

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Mr. M.S. Arya was posted as a Commandant but an issue has been raised as to whether BTC was an independent Unit. On 7.9.1990 a charge sheet was drawn up against the respondent in the following terms:

“The accused IRLA No. 2199, Shri Birender Narayan Jha, Deputy Commandant, Basic Training Centre, Border Security Force, Training Centre and School, Hazaribagh is charged with:-

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BSF Act DIRECTLY ACCEPTING
GRATIFICATION

SEC.41(a) AS A REWARD FOR PROCURING ENROLMENT

In that he,

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at Border Security Force Campus, Meru (Hazaribagh) in the second week of July 1990 accepted Rupees 6,000 (Rupees six thousand only) from No. 90401117 Recruit Constable Bhavesh Kumar Jha under training at Subsidiary Training Centre, Border Security Force, Hazaribagh for procuring his enrolment in the Border security Force.

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BSF Act INDIRECTLY ACCEPTING
GRATIFICATION

SEC.41(e) AS A REWARD FOR PROCURING ENROLMENT

In that he,

G

at Border Security Force Campus, Meru (Hazaribagh) in the second week of July 1990 accepted Rupees 6,000 (Rupees six thousand only) from No. 90401117 Recruit Constable Bhavesh Kumar Jha under training at Subsidiary Training Centre, Border Security Force, Hazaribagh for procuring his enrolment in the Border Security Force.

Sd/-

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[M.S. ARYA]
COMMANDANT

Place: Meru, Hazaribagh

Date: 7th September, 1990

I have heard the officer and he pleads 'Not guilty'. Remanded for preparation of Record of evidence.

Sd/-
Comdt.
7.9.90"

A proceeding for recording of evidence against the respondent thereupon was initiated. He raised an objection about the validity of the proceeding but the same was rejected. The respondent thereafter was transferred to 127 Bn. in Punjab but he was re transferred to TCS Hazaribagh in August, 1991 for the purpose of facing his trial by General Security Force Court.

In the trial held by the General Security Force Court, the respondent was found guilty of the said charges and by an order dated 27.2.1992 he had been sentenced to dismissal from service.

Raising a number of contentions he filed a writ petition in the High Court of New Delhi marked as CWP 999/1992.

A learned Single Judge of the High Court *inter alia* held that there had been a gross violation of Rules 45B and 46 of the Border Security Force Rules. It was further held that a very valuable right of the respondent in the form of protection from bias had been denied to him. The learned Judge in that view of the matter was of the opinion that other contentions raised on behalf of the respondent need not be gone into. However, the learned counsel appearing on behalf of the appellants suggested that as the prosecution had examined a large number of witnesses including Mr. Garcha (P.W. 13) and the respondent had sufficient opportunity to cross examine them, on the basis of materials brought on record, the Court could come to a finding that the respondent was guilty of the offence and as such was not entitled to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

The learned counsel appearing on behalf of the respondent, on the other hand, submitted that the findings of guilt arrived at by the Court is not supported by any evidence at all. In the aforementioned premise the learned Single Judge went into the question as to whether the finding of guilt arrived at by the General Security Force Court was based on any evidence and upon analysing the same came to the conclusion that no evidence had been brought on records to prove the guilt of the respondent.

A The appellant herein preferred an appeal before the Division Bench and by reason of the impugned judgment the same was dismissed. The appellant is before us aggrieved thereby.

B Mr. Ranjit Kumar, the learned senior counsel appearing on behalf of the appellant had taken us through the Border Security Force Act and the Rules framed thereunder and contended that in terms of the scheme of the Act sufficient procedural safeguards are provided to the delinquent. A finding on the guilt of the accused is reached after three different stages of filtration which are independent of each other. In each of the aforementioned stage, Mr. Ranjit Kumar would submit, the accused gets an opportunity to cross-examine the witnesses and the authority on the basis of the materials brought on record at each of the stage, may drop the proceedings against him. The learned counsel would contend that the learned Single Judge committed a manifest error in reappreciating the evidence which was not within the domain of the High Court exercising its jurisdiction under Article 226 of the Constitution of India having regard to the settled principles of law that it does not exercise any power of superintendence over the Courts constituted under the Army Act, BSF Act and in that view of the matter it could not have reappreciated the evidence. The learned counsel would contend that admittedly Mr. M.S. Arya was a Commandant of BTC which being a unit to which the respondent was attached he was entitled to direct recording of evidence in terms of the Act and the Rules. According to the learned counsel, Mr. Garcha being a Deputy Inspector General of Police could have further asked the Commandant of a Unit to take disciplinary measures against the respondent both in terms of Rule 46 as also Rule 16(7) of the Rules.

F Mr. Sharma, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that admittedly Mr. Garcha was biased against the respondent. He was a witness in the trial and in fact he examined himself as PW 13. In that view of the matter, the learned counsel would contend, in fairness he ought to have referred the matter to the Headquarters for attaching the respondent to another Unit. BTC being not a unit but merely a wing of TCS, Mr. Sharma would urge, Mr. M.S. Arya had no jurisdiction in the matter as a consequence whereof all proceedings subsequent thereto were rendered invalid.

G Before embarking upon the rival contentions of the parties, we may notice the following provisions of the Border Security Force Act:

H "2(1)(f) "Commandant", when used in any provision of this Act with

reference to any unit of the Force, means the officer whose duty it is under the rules to discharge with respect to that unit, the functions of a Commandant in regard to matters of the description referred to in that provision;

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2(1)(h) "Deputy Inspector-General" means a Deputy Inspector-General of the Force appointed under Section 5;

B

2(1)(n) "Inspector-General" means the Inspector-General of the Force appointed under Section 5;

5. Control, direction, etc.(1) The general superintendence, direction and control of the Force shall vest in, and be exercised by, the Central Government and subject thereto and to the provisions of this Act and the rules, the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director-General of the Force.

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(2) The Director-General shall, in the discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy Inspectors-General, Commandants and other officers as may be prescribed by the Central Government.

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41. Miscellaneous offences-Any person subject to this Act who commits any of the following offences, that is to say-

(a) ...

E

(b) ...

(c) ...

(d) ...

(e) directly or indirectly accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or

F

(f)

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shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Punishments awardable by Security Force Courts: (1) Punishments may be inflicted in respect of offences committed by persons subject

H

A to this Act and convicted by Security Force Courts according to the scale following, that is to say-

1(c) dismissal from the service;

B 49. Alternative punishments awardable by Security Force Courts- Subject to the provisions of this Act, a Security Force Court may, on convicting a person subject to this Act of any of the offences specified in sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in section 48 regard being had to the nature and degree of the offence.

C 64. Kinds of Security Force Courts-For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say-

- D (a) General Security Force Courts;
(b) Petty Security Force Courts; and
(c) Summary Security Force Courts.

E 65. Power to convene a General Security Force Court- A General Security Force Court may be convened by the Central Government or the Director-General or by any officer empowered in this behalf by warrant of the Director-General.

F 68. Composition of General Security Force Court-A General Security Force Court shall consist of not less than five officers, each of whom has held the post of Deputy Superintendent of Police for not less than three whole years and of whom not less than four are of a rank not below that of a confirmed Deputy Superintendent of Police.

F 72. Powers of a General Security Force Court- A General Security Force Court shall have the power to try any person subject to this Act for any offence punishable thereunder and to any sentence authorized thereby.

G 107. Finding and sentence not valid, unless confirmed no finding or sentence of a General Security Force Court or a petty Security Force Court shall be valid except so far as it may be confirmed as provided by this Act.

H 108. Power to confirm finding and, sentence of General Security Force Court-The findings and sentences of General Security Force Courts may be confirmed by the Central Government or by any officer

empowered in this behalf by warrant of the Central Government. A

The Central Government in exercise of its power conferred upon it under Section 141 of the Border Security Force Act made rules known as the Border Security Force Rules, 1969. Some of the provisions of the Rules are in the following terms:

14A Ranks-(1) The officers and other members of the Force shall be classified in accordance with their ranks in the following categories, namely:- B

(a) Officers

....

- (4) Deputy Inspector-General C
- (5) Additional Deputy Inspector-General
- (6) Commandant
- (7) Deputy Commandant

15. The task of the Force and command and control thereto

(1) ... D

(2) in discharging the functions under sub-rule (1), the responsibility for the command, discipline, morale and administration shall,-

(a) in the case of Inspector-General, extend to all battalions, units, headquarters establishment and Force personnel placed under him; E

(b) in the case of a Deputy Inspector-General, extend to all the battalions, other personnel and units placed under him; and

(c) in the case of a Commandant, extent to the battalion or unit placed under him. F

(3) ...

(4) The command, discipline, administration and training of battalions, units and establishments not placed under a Deputy Inspector-General or an Inspector-General shall be carried out by such officer and in such manner as may from time to time be laid down by the Director-General. G

16. Command-

(5) Disciplinary powers over a person subject to the Act shall be H

A exercised by the Commandant of the battalion or unit to which such a person belongs or the officer on whom command has devolved in accordance with sub-rule (2).

(7) The Director-General, the Inspector-General and the Deputy Inspector-General may specify one or more officers of the staff who shall exercise the disciplinary powers of a Commandant in respect of persons belonging to or doing detachment duty at their respective Headquarters.

44. Charge Sheet-Where it is alleged that an officer or a Subordinate Officer has committed an offence punishable under the Act, the allegation shall be reduced to writing in the form set out in Appendix VI.

45B. Hearing of charge against an officer and a subordinate officer-

(1)(a) The charge against an officer or subordinate officer shall be heard by *his Commandant*. Provided that charge against a Commandant, a Deputy Inspector-General or an Inspector-General may be heard either by an officer commanding a Unit or Headquarters to which the accused may be posted or attached or by his Deputy Inspector-General, or his Inspector-General or, as the case may be, the Director-General.

(b) The charge sheet and statements of witnesses if recorded and relevant documents if any, shall be read over to the accused: Provided that where written statements of witnesses are not available the officer hearing the charge shall hear as many witnesses as he may consider essential to enable him to know about the case.

(c) The accused shall be given an opportunity to make a statement in his defence.

(2) After hearing the charge under sub-rule (1), the officer who heard the charge may-

(i) dismiss the charge; or

(ii) remand the accused, for preparation of a record of evidence or preparation of abstract of evidence against the accused;

Provided that he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him, it is not advisable to proceed further with it;

Provided further that in case of all offences punishable with death, a record of evidence shall be prepared.

46. Attachment to another unit-The Commandant shall not deal with any case-

- (i) where the offence with which the accused is charged is against the Commandant himself; or
- (ii) where the Commandant is himself a witness in the case against the accused; or
- (iii) where the Commandant is otherwise personally interested in the case and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector General:

Provided that a Commandant shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Force Mess, band or institution of which the Commandant is a member or trustee or because of offence is one of disobedience of such Commandant's orders."

The scheme of the Act and the Rules leading to holding of a trial by the General Security Force Court leaves no manner of doubt that the basic principles of natural justice have been codified therein. The provisions of the Act and the Rules in no uncertain terms envisage protection from bias against an officer. We may notice that the Act which was enacted in the year 1968 even sought to fill up the gaps occurring in other Acts like Army Act, Navy Act or Armed Forces Act in this behalf so as to protect a person from personal bias or a real likelihood of bias. Rule 46 was made with a view to achieve the said purpose. It is not in dispute having regard to the phraseology used in Rule 45 B of the Rules that an accused at the first instance is bound to be tried by his Commandant. Necessarily, the question which arises for consideration would be as to who was the Commandant of the respondent at the relevant point of time. Concededly Mr. Garcha was the Commandant of the Respondent till 17.7.90. A question which is to be posed and answered is as to whether the BTC is a Unit of TCS. The appellant herein in their counter-affidavit before the High Court stated 'that the respondent was posted to BSF. TC&S Hazaribagh and was further posted to Basic Training Centre of the TC&S Hazaribagh on 19.7.1990 by the DIG, BSF TC&S Hazaribagh. The BSF Training Centre & School Hazaribagh is a Training Institution composing of the following wings:-

- (a) Basic Training Centre
- (b) Specialised Training Centre & School

A (c) Administrative Wing”

B Having regard to the provisions of the Act and the Rules, as noticed hereinbefore, we are of the opinion that only because in a Unit or Battalion a Commandant is posted, existence of a Unit would not be presumed. Once it is held that Basic Training Centre or Specialised Training Centre & School or Administrative Wing are wings of the BSF, Training Centre & School; each wing being a component thereof the same cannot be treated to be a separate unit for the purpose of Rule 45B of the Rules. Section 2(1)(f) of the Border Security Force Act defines Commandant with reference to a unit and not Commandant as a holder of post.

C Rule 46 is a proviso or an exception to Rule 45 B of the Rules. It seeks to protect an accused from bias or real likelihood of bias of a Commandant and in the event, the Commandant himself is a witness or is otherwise personally interested in the matter, he is to place the matter before a competent authority to see that the accused is attached to a different unit.

D For the purpose of this case we need not go into the correctness or otherwise of the contention of Mr. Sharma to the effect that the principles of purposive construction should be adopted by us so as to hold that in case of this nature the power under Rule 46 could not have been exercised by Mr. Garcha despite the fact that he was a Deputy Inspector General. However, we may notice that from the records it appears that all actions have been taken by Mr. Garcha as a Commandant and not as a Deputy Inspector General. He, E having regard to the hierarchy of the officers, is higher in rank than the Commandant. In a case of this nature, however, we are of the considered opinion that keeping in view of the personal interest shown by Mr. Garcha he should not have exercised his purported statutory power under Rule 46 by attaching the respondent to a wing of the own unit. Exercise of a statutory power may, although not be invalidated on the ground of inherent lack of F jurisdiction on his post but the order of attachment passed by Mr. Garcha having regard to the facts and circumstances of the case must be held to be illegal.

G Submission of Mr. Ranjit Kumar to the effect that Mr. Garcha could delegate his power to Mr. Arya cannot be accepted. A power under Rule 16(7) of the Rules can be exercised in a general manner and not in a particular far less in a matter where Rule 46 will be applicable. The principles of *specialia generalibus non derogant* shall apply in such a case.

H In the instant case, Mr. Garcha in his letter to Mr. M.S. Arya described himself as Commandant, BTC, TC&S which itself is a pointer to show that BTC is not a unit totally independent of TC&S. It is further not in dispute that Mr. Arya was an officer subordinate to him. His letter dated 4th

September, 1990 in no uncertain terms points out that he had for all intent and purpose directed Mr. Arya to initiate a disciplinary action against the respondent. The said action was to be taken on the basis of the materials disclosed therein. Such a procedure is unknown in law: An authority who is higher than the Commandant, in exercise of his power conferred upon him under Rule 46 could not have directed the Commandant of a wing of his own unit to initiate departmental proceedings. In law it was the disciplinary authority alone who was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is contemplated or not. He cannot do so at the instance of a higher authority who had not only no role to play in the matter but also admittedly was biased. [See *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR (1952) SC 16 and *Union of India and Other v. Harish Chandra Goswami*, [1999] 4 SCC 575. Bias against the respondent on the part of Mr. Garcha is undisputed.

This Court in *S. Parthasarathi v. State of A.P.* [1974] 3 SCC 459 proceeded on the footing of real likelihood of 'bias' and there was in fact a total unanimity on this score between the English and the Indian Courts.

Mathew, J. in that case observed :

"16. The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per *Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C) Ltd. v. Lannon*, (1968) 3 WLR 694, 707. We should not, however, be understood to deny that the court might with greater propriety apply the 'reasonable suspicion' test in criminal or in proceedings analogous to criminal proceedings."

Lord Thankerton however in *Franklin v. Minister of Town and Country Planning*, (1948 AC 87) had this to state :

A “.....I could wish that the use of the word ‘bias’ should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as
B between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.’

Natural justice as is well known is founded on two basic principles:

- C (a) *Audi alteram partem*.
(b) *Nemo iudex in causa sua*

The duty to act fairly is the theme of the principles of natural justice. The Rule generally applies with full force to conduct leading directly to a final act of decision.

D In *Halsbury’s Laws of England*, Vol. 1(i), 4th Edition it is stated:

“85...Thus a presumption that natural justice must be observed will arise more readily where there is an express duty to decide only after conducting a hearing or inquiry or where the decision is one entailing the determination of disputed questions of law and fact. *Prime facie*,
E moreover, a duty to act in accordance with natural justice will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where that status is not merely terminable at pleasure, or to deprive a person of liberty or property rights or another legitimate interest or expectation, or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation so to act.
F Where a discretionary power to encroach upon individual rights is exercised, factors to be taken into account in deciding what fairness requires in the exercise of the power include the nature of the interests to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any involved. The content
G of duty to act fairly will normally be very limited where the authority is in the course of exercising a function not culminating in a binding decision, but that may not be the case if the wording of the grant of powers or the context indicates that a fair hearing ought to be extended to persons likely to be prejudicially affected by an investigation or recommendation.”

H It has further been observed therein:

“94. *Audi alteram partem*. The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of a discretionary decision on the interests of an individual may suffice in itself to attract an implied duty to comply with this rule.”

Bias can be classified under three different heads:

- (a) a legal interests which mean that the Judge is “in such a position that a bias must be assumed.”
- (b) Pecuniary interest
- (c) Personal bias.

Law in this regard has expanded to a great extent. In J.F. Garner’s *Administrative Law*, it is stated:

“The natural justice ‘bias’ rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision-maker then that decision can be challenged. It is a matter of the courts ensuring that ‘justice is seen to be done’. Since successful challenge is based on appearances, it is natural that the types of matter to which the rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not generally more widely to administrative decision-making and actions.”

In *Metropolitan Properties Co.(FGC) Ltd. v. Lannon* reported in 1968 3 All ER 304, Lord Denning MR observed:

“In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does

A it, his decision cannot stand; see *R. v. Huggins* (8), Sunderland justices (9), per Vaughan Williams, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough; see *R. v. Camborne Justices, ex parte Pearce* (10); *R. v. Nailsworth Justices, ex parte Bird* (11). There must be circumstances from which a reasonable man would think it likely or probable that the justice, or

B Chairman, as the case may be, would, or did, favour one side unfairly at the expenses of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking; The Judge was biased.'

C Danckwerts, L.J. observed :

“Of course, I am not saying that the mere fact that a solicitor had acted for or advised tenants should disqualify, him from sitting. But the facts of this case display some lack of appreciation of the rules of conduct by Mr. Lannon, and my conclusion is that it was not wise of Mr. Lannon to act as Chairman of the Committee in the circumstances.”

D De Smith in his Administrative and Constitutional Law observed:

“If the main functions of a tribunal are to determine disputed questions of law and fact, and to exercise discretionary powers by reference to standards that are not self-created but explicitly prescribed by statutory or other rules, on the basis of evidence openly tendered, and if, moreover, the abdicators can normally be expected to preserve a detached attitude towards the parties and issues before them, then a ‘departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator ought not be and will not be countenanced.’”

F In *Manak Lal v. Prem Chand*, AIR (1957) SC 425, this Court observed:

“...But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be question of fact to be decided in each case. “The principle”, says Halsbury, “*nemo debet esse iudex in causa propria sua* precludes a justice, who is interested in the subject-matter of a

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dispute, from acting as a justice there in" [Halsburys' Laws of England Vol. XXI, p.535, para 952]. In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

In *Andhra Pradesh State Road Transport Corporation, Hyderabad v. Sri Stayanarayana Transports (P) Ltd., Guntur*, AIR (1965) SC 1303, this Court held that the elementary rule of natural justice that person trying a cause, though in a quasi-judicial proceeding, should not suffer from personal bias. This Court stated the law thus:

"We ought, however, to add that in the light of the general considerations which we have set out, it is of utmost importance that in appreciating evidence, the Court ought to adopt a very cautious, circumspect, and careful approach. If the evidence led by the parties in such a case is tested by cross-examination, it would be easier to determine where truth lies. But in the absence of cross-examination, appreciating the effect of competing affidavits is not an easy matter. In such a case, the Court must always enquire on which side the probabilities lie and must scrutinize the affidavits very critically to determine which of them deserves to be believed. Naturally, in dealing with such a question of fact in appeal, we are normally inclined to attach importance to the findings of fact recorded by the High Court itself."

In *Mineral Development Ltd. v. The State of Bihar*, AIR (1960) SC 468, this Court was concerned with a matter relating to the cancellation of licence. K. Subba Rao, J. laid down the law governing doctrine of bias vis-a-vis judicial tribunals.

In *Ratan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School*, [1993] 4 SCC 10, this Court considered a large number of decisions and observed that the requirement of the natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter i.e. being dealt with, and so forth. It further noticed that the doctrine of natural justice cannot be put within the straight-jacket of rigid formula.

This Court further noticed that De Smith in his *Judicial Review of Administration Action* at page 262 observed that a real likelihood of bias means at least a substantial possibility of bias. This Court held that there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the Inquiry Committee, namely, the said Shri

A 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 inquiry proceeding as a member of the Inquiry Committee to uphold the correctness of his deposition as a Judge.

B Rule 45 B confers a discretionary power upon the Commandant of the accused to discharge not only on the ground that there does not exist any material on record to proceed against him but also on the ground that having regard to the previous character of the accused and the nature of charges against him it was not advisable to proceed further in the matter.

C Rule 45 B of the Rules, therefore, having regard to the extent and nature of the power of the disciplinary authority, leaves no manner of doubt that the Commandant of the accused is required to apply his mind on the materials on record so as to enable him to arrive at a finding in favour or against the officer. The manner in which the chargesheet has been drawn leads to only one conclusion that Mr. Arya did so only on the command of Mr. Garcha. On a query made by us, Mr. Ranjit Kumar stated that no record is available with him to show that the respondent was supplied with any material as is mandatorily required under Rule 45 B. There is nothing on record also to show that at least the material which were referred to in Shri Garcha's letter dated 4th September, 1990 were brought to the notice of the respondent and he has been given an opportunity to make a statement in his defence. There is also nothing on record to show that even the materials in possession of Mr. Bakshi were requisitioned by Mr. Arya and he applied his own independent mind thereupon for directing preparation of record of evidence. From the tenor of the charge sheet dated 7.9.1990, it only appears that he merely heard the officer as to whether he pleads guilty thereto or not. The learned Single Judge of the High Court has considered materials on record and came to the conclusion that valuable rights of the respondent had been breached. The Division Bench went through the entire records and arrived at the same finding. The findings of the learned Single Judge or the Division Bench cannot be said to be perverse or contrary to law.

F We are, therefore, of the opinion that no case has been made out for interfering with the impugned judgment in exercise of our jurisdiction under Article 136 of the Constitution of India.

G This appeal is, therefore, dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.

S.K.S.

Appeal dismissed.